TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, THE CAPITAL TRUST COMPANY, ET AL., APPELLANTS,

vs.

HORATIO BROWNING AND ALPHEUS MIDDLETON, TRADING AS BROWNING & MIDDLETON; THOMAS E. KEANE, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED APRIL 4, 1899.

(17,351.)

(17,351.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, THE CAPITAL TRUST COMPANY, ET AL., APPELLANTS,

vs.

HORATIO BROWNING AND ALPHEUS MIDDLETON, TRADING AS BROWNING & MIDDLETON; THOMAS T. KEANE, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption (No. 860)	1	1
Transcript from the supreme court of the District of Columbia (No. 860)	1	1
Caption	1	1
Bill	1	1
Memorandum: Restraining order	8	8
Motion to set aside restraining order	8	8
Restraining order discharged as to Thomas T. Keane	9	9
Affidavits of H. K. Simpson and F. T. Chamberlin	10	10
Memorandum: Demurrer to bill of Central National Bank filed; demurrers of defendants Browning and Whitford filed	11	11
Demurrer of defendant Keane	11	11
Exhibit No. 1 to bill—Deed of Scott to Browning, April 24, 1896	12	12
Schedule A—Real estate	14	14
B—Personal estate	15	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 19, 1900.

	Original.	Print
Demurrers overruled, &c	18	18
Allowance of appeal by Court of Appeals, with endorsement directing clerk to prepare transcript	19	19
Order for citation	19	19
Citation	20	20
Memorandum: Appeal bond filed	21	20
Clerk's certificate	21	21
Minute entries of argument	22	21
Opinion	23	22
Decree of January 12, 1899	29	32
Caption (No. 882)	30	33
Transcript from supreme court of the District of Columbia (No. 882)	32	33
Caption	32	33
Demurrer of the Central National Bank	33	34
Demurrer of Browning & Middleton	34	35
Memorandum: Mandate filed	36	36
Decree	36	36
Order granting appeal	37	36
Citation and service	38	37
Memorandum: Appeal bond filed	39	37
Stipulation as to record	39	38
Clerk's certificate	40	38
Assignment of errors	42	39
Motion to dispense with printing record	43	39
Order dispensing with printing record and submitting cause	44	39
Opinion	45	40
Decree of March 14, 1899	47	41
Order allowing appeal	48	41
Bond on appeal	49	42
Citation and service	50	43
Clerk's certificate	51	43

1 In the Court of Appeals of the District of Columbia.

THOMAS T. KEANE ET AL., Appellants,
vs.
GEORGETTE A. CHAMBERLIN ET AL. } No. 860.

Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL. } In Equity. No. 19686.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill for Accounting and Injunction.

Filed August 25, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN, FRANK T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.: Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt, Plaintiffs,
vs.
HORATIO BROWNING, JOHN B. SCOTT, Alpheus Middleton, Thomas T. Keane, The Central National Bank of Washington, Edward O. Whitford, and Timothy D. Daly, Defendants. } In Equity. No. —, Doc. —.

The plaintiffs state as follows:

1. That they are all citizens of the United States, resident in the District of Columbia, except the Capital Trust Company, which is a corporation organized under the laws of Virginia, but having its principal place of business in said District. The plaintiff
2 Georgette R. Chamberlin sues as the executrix of the will of Franklin Tenney, and the other plaintiffs sue in their own right as creditors of the defendant Scott and beneficiaries under the deed of assignment hereinafter set forth.

2. That the defendants are all citizens of the United States, resident in the District of Columbia, except the Central National Bank of Washington, which is a corporation created under the national banking laws of the United States, having its habitat and principal place of business in said District. The defendant Browning is sued in his own right and as a member of the firm of Browning and Middleton and also as assignee under the deed of assignment hereinafter mentioned; the defendant Middleton is sued as a member of said firm of Browning and Middleton, and the other defendants are sued in their own right.

3. That on the 24th day of April, 1896, the defendant Scott, then residing and carrying on business exclusively in the city of Washington, in said District, made, executed, acknowledged, and delivered in said District to the defendant Browning, then also a resident of said District, his certain deed of assignment conveying to said Browning, his heirs, executors, administrators, and assigns, for the benefit of his, the said Scott's, creditors, among them all the plaintiffs and all the defendants (except said Scott), all his, said Scott's, estate, real and personal, the descriptive portion of said deed being as follows: "all and singular the real estate, goods, chattels, merchandise, effects, stocks, promissory notes, debts, claims, demands, and property of him, the said party of the first part (except all legal exceptions which are hereby reserved by said party of the first part), the same being fully described in Schedule 'A' hereto annexed;" that the said Schedule "A" contained, among other things, the following item: "Estate for life of said party of the first part in 25 acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A. No. 11, folio 241 *et seq.*, of the land records of said county," said deed being the deed from Coughlan to Scott, hereinafter referred to in the 9th paragraph of this bill. The said schedule also contained items of certain real estate and personalty of the assignor in the District of Columbia, not necessary here and now to recapitulate. The trust created by said deed of assignment in the assignee was in the usual form as to taking possession, selling, and distributing, and said trust was accepted in writing by said Browning at the foot of said deed, and he caused the same to be recorded the next day, April 25, 1896, in Liber 2125, folio 4, land records of said District, and a copy thereof is filed herewith as Exhibit No. 1 and prayed to be read and considered as part of this bill.

4. That all the defendants had actual as well as constructive notice of the execution of said deed of assignment, and elected to accept the provisions thereof by, as the plaintiffs aver they all did, attending creditors' meetings called by the assignee, voting as to the disposition of the estate and accepting dividends paid by the assignee from the proceeds thereof.

3 5. That on or about the 10th day of May, 1896, the defendant Browning received back from the office of the recorder of deeds in this District the said original deed of assignment and retained same in his possession until June 3, 1896, when he caused

same to be recorded in the land records of Montgomery county, Maryland.

6. That meanwhile, to wit, on the 1st day of May, 1896, the defendant Thomas T. Keane filed in the circuit court of Montgomery county his certain action of debt for $737.54, and on May 23, 1896, his certain other action *for* debt for $242.36, against said Scott, and wrongfully and in violation of the terms of said deed of assignment, of which he had actual notice, and the provisions and benefits of which he had recognized and accepted, as hereinbefore set forth, caused to be levied attachments on said Montgomery County land to enforce said claims on the ground that said Scott was a non-resident of Maryland, and has proceeded with said attachments, as hereinafter set forth.

7. That afterwards and subsequent to the recording of said deed of assignment in Montgomery county and after all the defendants had accepted the provisions and benefits thereof, as aforesaid, the defendants did each and all file their certain actions of debt against said Scott in said Montgomery circuit court as follows: Thomas T. Keane, June 15, 1896, for $849.64; Browning and Middleton, as partners, September 29, 1896, for $2,217; The Central National Bank, September 29, 1896, for $3,049.69; Edward O. Whitford, Sept. 28, 1896, for $535.80; Timothy D. Daly, Oct. 20, 1896, for $1,173.83, and wrongfully and in violation of the terms of said deed of assignment, of which they each and all had actual notice, and the provisions and benefits of which they had recognized and accepted, as hereinbefore set forth, caused to be levied attachments on said Montgomery County land to enforce their said respective claims on similar grounds, and have proceeded with said attachments, as hereinafter set forth.

8. That on the 11th day of November, 1896, the said Keane obtained in said Montgomery circuit court on his said three claims, known on the docket respectively as "No. 57, Trials," "No. 63, Trials," and "No. 1, Appearances," judgments of condemnation for the respective amounts thereof, and on the 22 day of March, 1897, the said Browning and Middleton, Central National Bank, Whitford and Daly obtained in said court on their said respective claims, known on the trial docket respectively as Nos. 40, 42, 44, and 38, judgments of condemnation for the respective amounts thereof.

9. That on the 22nd day of December, 1896, said Keane filed in said circuit court for Montgomery county his certain bill in equity against the defendant Scott and his two daughters, Mary Elizabeth and Margaret Adelia, and one John D. Coughlan, wherein he alleges, among other things, that said Scott was on October 17, 1888, the owner in fee simple of said 25 acres of land, therein more particularly describing it, and had on said day, without any consideration, but voluntarily, conveyed it in fee-simple to said Coughlan, who had conveyed it back to said Scott, his heirs and
4 assigns, to the use of the said Scott, his heirs and assigns, upon the following trusts: "In trust for the said John B. Scott during his life to retain possession of said parcel of land and premises, without impeachment for waste, and receive the rents,

issues, and profits thereof for his own use and benefit, and from and after his death to hold said parcel of land and premises unless the same shall be disposed of as hereinafter authorized for the use and benefit of Mary Elizabeth Scott and Margaret Adelia Scott, daughter- of said John B. Scott, their heirs and assigns forever, as tenants in common; and upon this further trust, that said John B. Scott shall have full power and authority to lease or sell said parcel of land or any part thereof from time to time and convey the same in fee-simple absolute or by way of mortgage, deed of trust, or otherwise, and upon such terms and for such conditions as said John B. Scott may deed fit, and without obligation on the part of the purchaser to see to the application of the purchase-money or the person lending money to see to the application thereof, and to devise and to dispose of said parcel of land and premises by last will and testament executed according to law."

And that said conveyances were made with an intention and view of his, the said Scott's, becoming subsequently indebted and with the intent to hinder, delay, and defraud any one to whom he might thus subsequently become indebted, and that said conveyance from Coughlan to Scott gave to him all the rights, privileges, and advantages of a fee-simple owner, and that by the reservation of the powers therein contained he, said Scott, was intended to become and was the fee-simple owner, subject to no binding trusts, which said allegations these plaintiffs say were substantially true, and setting forth his three said attachments and judgments of condemnation, and that he was desirous of having all the interest of said Scott in said lands sold under a writ of "*fieri facias*" for the satisfaction of said judgments; by reason of said two deeds their sale at a fair valuation was obstructed and rendered impossible and no one could be obtained to purchase the interest of said Scott at more than a nominal sum, and praying for a receiver to take possession of said lands, and that said two deeds might be declared to be void, removed, vacated, and annulled; that said defendants, on February 15, 1897, answered said bill, admitting in substance all the facts alleged in said bill and denying only any fraudulent intent in the deeds; and said cause, at the June term, 1897, was heard on said bill and answer, the only questions arising being those arising from the construction of the terms in said deed from Coughlan to Scott, and on the 28th day of June, 1897, the court filed its opinion in said cause, wherein, among other things, it held that "In this deed the power is not a mere incident to the life estate reserved by the grantor, but it so thoroughly dominates and controls every other provision of the deed as to be equivalent to the entire fee-simple interest in the property," and on the 16th day of July, 1897, passed final decree setting aside and declaring to be null and void, to all intents whatsoever, said two deeds, so far as the same might interfere with or in any manner affect the rights and claims of the said Keane as creditor, and the defendants appealed from said decree to the court of appeals of Maryland, which, on June 28, 1898, affirmed said decree.

10. That on July 23, 1898, the said Keane filed in the clerk's

office of the lower court the mandate of affirmance and caused to be issued on his judgment, No. 57, for $737.54, a writ of "*fieri facias*," directed to the sheriff of Montgomery county, who has advertised the said land for sale thereunder on August 27, 1898, for cash in hand; that said farm is worth about $15,000, as plaintiffs are advised and believe, but will not realize nearly that sum if sold for cash and at sheriff's sale, but said sale will take place as advertised unless said Keane is restrained from completing it by order of this court, thereby producing great and irreparable injury to the plaintiffs and other creditors of said Scott under the deed of assignment mentioned in the 3d paragraph of this bill.

11. That the plaintiffs are each and all creditors under said deed of assignment for debts therein mentioned and scheduled, to wit, the plaintiff Georgette T. Chamberlin, as executrix of Franklin Tenney, holds and owns eleven (11) notes, one for $6,765.34; two for $2,000 each; one for $3,000; three for $2,598.54 each; one for $1,300; one for $650; one for $500, and one for $1,100; that plaintiff Frank T. Chamberlin holds and owns one note for $250; the plaintiff The Capital Trust Company holds seven notes respectively for $250, $150, $500, $400, $600, $558.90, and $300, endorsed to it, some for value and some for collection; the plaintiff Williams holds and owns two notes, one for $308.48, and the other for $450; the plaintiff Dexter holds and owns three notes respectively for $100, $104.82, and $300, and an account for work, $210.79, and the plaintiffs Lansburgh and Bro. holds and owns two notes, one for 6,200, and one for $475.00, and an open account for merchandise of $19.75; the said Kelley and Chamberlin hold and own a note for $1,087.08 and an open account for merchandise for $297.44, and the said William Galt holds and owns a note for $1,000, for all of which said Scott is and was at the date of his said assignment liable and none of which have been paid, except dividends of 12 and 4 per cent. paid by said Browning out of the assets, as hereinafter more particularly set forth.

12. That it was the intention of said Scott, well known to said Browning, to convey, as he states in his deed of assignment, all his property except legal exceptions, and the use of the term "estate for life" in reference to the Maryland land was an attempt to describe all the interest which he had therein, and had he known that the courts would hold that the deed under which he held was constructively fraudulent in its limitations and vested in him the fee-simple he would have so listed it in his schedule. The proper construction that should be given the granting clause and schedule together is that all title which said Scott had in said land passed by the deed of assignment, and in any event, as plaintiffs are advised, believe, and therefore allege, the grantor being a resident of the District of Columbia and the deed of assignment having been made in said
District, it vested in the assignee all property of said Scott,
6 wherever situated, irrespective of the schedule, at least so far
as concerns citizens or residents of said District; that it was the duty of said assignee to at once take possession of said Maryland farm, as well as all other property, which he failed and neg-

lected to do, but instead thereof attempted and undertook, as hereinafter stated, to ignore said deed of assignment so far as related to said farm and to convert same, in part at least, to his own use.

13. That said Browning did, as assignee, take charge of the assets of said Scott located in the District, but to what extent or value or what disposition he has made of them is unknown to plaintiffs, except that he sold the leasehold interest and furniture of two hotels, one of them being the National hotel, which he sold for $16,500.00 when he had an offer of $18,000.00 for it by another responsible bidder. He also sold some Washington real estate, but at what price plaintiffs do not know, and collected some money for said Scott and realized some profit by running the hotel for a short time, but as to figures on these points the plaintiffs are totally in the dark, the said Browning, although thereto requested by the plaintiffs, having failed and practically refused to render them any account further than to declare two dividends, one of 12 per cent., Aug. 20, 1886, and one of 4 per cent., about June 10, 1897. There was also a large amount of stock and farm equipments of great value on said Maryland farm, but whether said Browning, as assignee, ever took possession or not these plaintiffs are not advised, nor as to whether he ever took possession of all the assets in the District or has converted them all into money, nor as to the account or calculation by which the two dividends aforesaid were reached.

14. That the said Browning not only failed to take charge of the Maryland property, as was his duty, but he imperiled its safety from seizure by delaying the recording of the deed of assignment there, and by failure to give bond as required by the Maryland statute, and then attempted to take advantage of his own wrong by attaching the land for a debt due his firm, as aforesaid, and *and* causing it to be attached for a debt due to the Central national bank, of which he was a stockholder, director, and vice president.

That all said attaching creditors were represented by the same attorneys and moved in harmony, with the understanding that said Keane's equity suit was to enure to the benefit of all and all the claims sued on were for debts existing at the time of said assignment. The proceedings, as plaintiffs are advised, were taken on the theory that the deed of assignment, so far as it covered the Maryland property, had not passed title even to the life estate, because of a provision in the Maryland statute that no title should pass until the assignee or trustee gave a bond; but plaintiffs are advised that a proper construction of that statute is that it is for assignments made by residents only and for the protection only of resident creditors and does not affect non-resident assignments, or that it, in any event, would be grossly inequitable and unjust to permit the said Browning, either individually or for his firm or his bank, to levy attachments on and take to his or its own
7 use the assigned property, instead of proceeding as assignee to have the cloud removed and utilize the property for the benefit of those — whom he had been chosen and by his solemn deed consented to represent; and that as to the other defendants

who attached the said property the plaintiffs claim that they are estopped to deny the validity of said deed of assignment as to any of the property of the assignor or its sufficiency to pass the title, because, as the plaintiffs reiterate, they each and all attended creditors' meetings called under it, voted thereat, and accepted the two dividends declared as aforesaid.

15. That, in addition to the other wrongful acts of said Browning in violation of his trust, he afterwards, on the — day of December, 1897, filed another suit in his own name in said Montgomery circuit court and levied an attachment for $1,409.50 on said land, and on January 17, 1898, recovered judgment of condemnation in "No. 81 Appearances" for said amount; that the acts aforesaid of said Browning show that he is not a fit and proper person further to be charged with the execution of said trust created by said deed of assignment, and that by his neglect, default, and wrong-doing he has forfeited all right to any commission or compensation for his services.

The premises considered, the plaintiffs pray as follows:

One. That the writ of subpœna be issued, commanding the defendants severally to appear and answer the exigency of this bill.

Two. That the defendant Browning be required with his answer to exhibit an account of the assets that came to his hands and of the manner in which he has disposed of same.

Three. That the defendant Scott in his answer disclose the location and character of any property not mentioned in the schedule, but owned by him at date of the assignment.

Four. That said Browning be removed as assignee and a trustee appointed in his stead to execute said trust, and said Browning required to turn over to him any balance or assets in his hands.

Five. That said Scott be required, if need be, to execute to said new trustee a deed more specifically conveying the fee-simple title to said Maryland land.

Six. That the attaching creditors be restrained, pending this action, from in any manner proceeding to enforce their said attachments on judgments of condemnation against said Maryland land, and from doing any act or thing to hinder, delay, or interfere with the control or management of the estate abroad for the equal benefit of all said Scott's creditors, and from in any way seeking to secure to themselves any greater benefit or interest out of said estate and effects than shall represent their "*pro rata*" share under said assignment, and that on final hearing such injunction be made perpetual.

Seven. Or, if this cannot be done, that the attaching creditors be directed to bring into court any moneys realized from said land, and that the same be treated as assets passing by said deed of assignment, and distributed among the creditors as therein directed.

8 Eight. For a reference then to the auditor for proof of claims and for the taking and stating on account with the assignee, Browning.

Nine. And for such other and further relief as to the court may seem right and proper.

GEORGETTE A. CHAMBERLIN,
By F. T. CHAMBERLIN.
FRANK T. CHAMBERLIN.
HENRY M. DEXTER.
KELLEY & CHAMBERLIN.
LANSBURGH & BRO.
THE CAPITAL TRUST COMPANY,
By O. B. HALLAM, *Solicitor.*
WASH. B. WILLIAMS.
WILLIAM GALT.

O. B. HALLAM,
Solicitor for Plaintiffs.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

HENRY M. DEXTER.

Subscribed and sworn to before me this — day of August, A. D. 1898.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clk.*

Memorandum.

Aug. 25, '98.—Restraining order granted, returnable August 29.

Motion of T. T. Keane, &c.

Filed August 26, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs,
v.
HORATIO BROWNING ET AL., Defendants. } In Equity. No. 19686.

Now comes the defendant Thomas T. Keane, by Arthur A. Birney and Arthur Peter, his solicitors, and moves the court to set aside, revoke, and annul, so far as he is concerned, the restraining order heretofore, on the 25th day of August, 1898, granted in this cause.

ARTHUR A. BIRNEY.
ARTHUR PETER,
Solicitors for Def't Keane.

9 CITY OF WASHINGTON, } *To wit:*
District of Columbia, }

I, Thomas T. Keane, on oath say that I am the defendant named in the above-entitled cause; that the allegation of the bill of complaint that the said Keane elected to accept the provisions of *of* said deed of assignment *are* wholly untrue and without foundation; that I attended no meeting of the creditors except the first; I then and there refused to accept the assignment or to be bound by it in any way, and have ever since maintained the same position, and I never accepted nor received any dividend from the assignees, and I further say the said proposed sale is to be made upon a writ of *fi. fa.* issued upon a judgment of mine against said Scott, and the other defendants are in nowise interested therein or responsible therefor, save as the- may be possessed of judgments subsequent to mine against said Scott. In said suit and in the issuance of the *fi. fa.* therein I have acted, upon the advice of counsel, independently of any other creditor.

THOS. T. KEANE.

Subscribed and sworn to this 26th day of August, 1898.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR.

Order Discharging Restraining Order as to Thomas T. Keane.

Filed August 26, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN }
vs. } No. 19686.
HORATIO BROWNING ET AL. }

Upon motion of the defendant Thomas T. Keane, and after argument by counsel for the complainants and for the said Keane, it is this 26th day of August, 1898, ordered that the restraining order heretofore passed in this cause be, and the same is, modified so that it shall not interfere with the right of the defendant Thomas T. Keane to allow or cause the sale advertised under his writ of *fieri facias* to proceed.

By the court:

A. C. BRADLEY, *Justice.*

10 *Affidavits of H. K. Simpson and F. T. Chamberlin.*

Filed August 27, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs, *vs.* HORATIO BROWNING ET AL., Defendants.	In Equity. No. 19686, Dock. 45.

The affiant, Henry K. Simpson, says that he is a resident of the District of Columbia, and that on the 5th day of May, 1896, he was secretary of the People's Fire Insurance Co. and secretary of the Capital Trust Co., both of which companies were creditors of John B. Scott, who had shortly before—that is to say, on or about April 24, 1896—made an assignment to Horatio Browning for the benefit of his creditors; that on said May 5 the affiant attended a meeting of said Scott's creditors, called by said assignee, at the National hotel, in the city of Washington, when said assignee called the meeting to order and presented a schedule of the assets and liabilities, showing assets amounting to $31,017.54 and liabilities amounting to $85,848.52; among the assets was listed 'life interest in county property, $200;' that the meeting then organized by electing James W. Somerville chairman and the affiant as secretary, and, after discussion, it was resolved that a committee of five, consisting of F. T. Chamberlin, T. D. Daly, A. W. Kelley, Wm. A. Butler, and T. T. Keane, be appointed to confer with Mr. Browning, the assignee, to consider a time for the sale of the properties; that on the next day, May 5, 1896, the said committee of five met at said hotel, all the members present, and organized by electing Dr. Chamberlin president and the affiant as secretary, and passed resolution requesting certain information from the assignee as to the running of the hotels and certain action on his part in relation to the management; that afterwards, on May 8, said committee met again, all the members present, and resolved to call another general meeting of the creditors on May 13, and to recommend removal of the assignee and appointment of a receiver; that the creditors met pursuant to such call, and the committee of five made to the meeting that recommendation, and Mr. Daly moved that legal steps be taken to appoint a receiver, and on a call of the list of creditors, $34,806.34 in amount voted in the affirmative and $17,923.41 in the negative. Among those voting in the affirmative were Messrs. T. T. Keane, T. D. Daly, and E. O. Whitford & Co., and among those voting in the negative were Mess. Browning & Middleton, and H. Browning, but, as affiant is informed and believes, no steps were subsequently taken to carry out the motion so adopted, nor was any subsequent meeting of the creditors held.

The affiant kept no official record of the proceedings of the creditors' meetings or of the committee of five, but did keep rough

minutes thereof, which were read and approved at each
11 meeting of the creditors and committee, and are now in affiant's possession, and it is from his recollection, as refreshed from an examination of these notes or minutes, that he now principally speaks in this affidavit.

HENRY K. SIMPSON.

Subscribed and sworn to before me this 27th day of August, 1898.

JOHN H. O'DONNELL,
[SEAL.] *Notary Public, D. C.*

The affiant, Frank T. Chamberlin, says that he has read the foregoing affidavit of Henry K. Simpson, and that he knows that the statements therein are true; that affiant was the chairman of the committee of five referred to in said affidavit, and that Mess. T. T. Keane and T. D. Daly were present at the two meetings of the committee and the two meetings of creditors and participated therein and voted in favor of the action taken, and that the legal steps to appoint a receiver were not taken, only because of the difficulty in getting together again the creditors voting in favor of same.

FRANK T. CHAMBERLIN.

Subscribed and sworn to before me the above date.

[SEAL.] SAMUEL H. WALKER,
Notary Public.

Memorandum.

Sept. 24.—Demurrer to bill of Central national bank filed.
" 26.—Demurrers of defendants Horatio Browning, Alpheus Middleton, and Edward O. Whitford filed.

Demurrer of Defendant Thomas T. Keane.

Filed September 28, 1896.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN, Complainant,
vs.
HORATIO BROWNING ET AL., Defendants. } Equity. No. 19686.

Now comes the defendant Thomas T. Keane, and, by protestation, not confessing any of the matters alleged in the bill of complaint to be true as charged, demurs to the said bill and says that he ought not to be required to answer the same, because he says that the said complainants have not in and by their said bill stated such a case as entitles them to any relief in a court of equity, in that—

1st. The said bill is multifarious.

2d. Complainants show no such interest in the property involved as entitled them to file this bill and seek the relief prayed.

12 3d. Because the court is without jurisdiction to proceed as prayed.

4th. Because of the complainants' laches apparent upon the face of said bill.

5th. For numerous other reasons apparent upon the face of said bill.

Wherefore the defendant prays that the said bill may be dismissed, and that he may have judgment for his costs.

A. A. BIRNEY,
Solicitor for Defendant Thomas T. Keane.

DISTRICT OF COLUMBIA, *ss:*

I, Thomas T. Keane, defendant in the above-entitled cause, depose and say that the foregoing demurrer is not interposed for purposes of delay.

THOMAS T. KEANE.

Subscribed and sworn to before me this 28th day of September, 1898.

GEO. W. DREW,
[SEAL.] *Notary Public, D. C.*

I, Arthur A. Birney, counsel for defendant Thomas T. Keane, do hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

A. A. BIRNEY.

EXHIBIT No. 1 TO PLAINTIFFS' BILL.

Filed October 19, 1898.

Liber 2125, folio 41 *et seq.*

Fee, $4.75.

John B. Scott to Horatio Browning. } Recorded Apr. 25th, 1896, 11.10 a. m. Assignment. (4.)

This indenture made this 24th day of April 1896, by and between John B. Scott of the city of Washington, District of Columbia, party of the first part, and Horatio Browning of the same place, party of the second part; whereas, the party of the first part is indebted unto divers persons in sundry sums which he is unable to pay in full, and is desirous of providing for the payment of the same, so far as in his power; and whereas, said indebtedness consists of two classes, viz: of the late firm of Crosby, Burton & Co. proprietors of the National hotel, consisting of Walter Burton, William H. Crosby and said John B. Scott, and the individual indebtedness of said grantor, now therefore this indenture witnesseth, that said party of the first —, for and in consideration of the premises, and of the sum
13 of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, conveyed, assigned, transferred, and

set over, and by these presents doth grant, bargain, and sell, convey, assign, transfer and set over unto the said party of the second part, his heirs, executors, administrators and assigns all and singular the real estate, goods, chattels, merchandize, effects, stocks, promissory notes, debts, claims, demands and property of him the said party of the first part, (except all legal exemptions, which are hereby reserved by said party of the first part), the same being fully described in Schedule "A" hereto annexed, to have and to hold the same above-mentioned property set out and described in said Schedule "A" hereto annexed, unto the said party of the second part, his heirs, executors, administrators, and assigns: In trust, however, and to the uses and intents and purposes, following, that is to say, that the said party of the second part shall take immediate poss-ion of the said property and with all reasonable diligence sell and dispose of the said property and effects and convert the same into money, and also to collect all debts and demands hereby assigned, as may be collectible, and with and out of the proceeds of such sales and collections, to pay: First, all just and reasonable expenses, costs, and charges of executing this assignment and of carrying out and into effect the trust hereby created, together with a reasonable commission, to the party of the second part for his services; second, to pay and discharge in full, if the residue of said proceeds are sufficient for that purpose, all debts and liabilities now due or to become due from the said party of the first part, with all interest money due or to become due from the said party of the first part thereon; and if the residue of said proceeds shall not be sufficient to pay the said debts and liabilities, and interest money in full, then to apply the said residue of said proceeds to the payment of the said debts and liabilities, *notably* in proportion, a full list of which debts and liabilities and the amount thereof, and the residence of those to whom they are due is contained in Schedule "B" hereto annexed; third, and if, after the payment of all the said debts and liabilities, in full, there be any remainder or residue of said proceeds, to repay and return the same to the said party of the first part, his executors, administrators, or assigns. And in furtherance of the premises that the said party of the first part doth hereby make and constitute the said party of the second part, his true and lawful attorney, giving and granting to the said party of the second part full power and authority to do and perform all and every act word thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as said party of the first part might or could do and with the full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover, and receive of, and from all and every person or persons, all property, debts and demands, due and owing and belonging to the said party of the first part, and
14 to sue, prosecute, defend and implead for the same. The said party of the second part doth hereby accept the trust created and reposed in him by this instrument, and covenants and agrees to and with the said party of the first part that he will

faithfully and without delay execute the trust created according to the best of his skill, knowledge and ability:

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first hereinbefore written.

JNO. B. SCOTT. [SEAL.]
H. BROWNING. [SEAL.]

Witness:
AUGUSTUS P. SCHELL.

Inventory of the Estate, Real and Personal, of said John B. Scott, Assignor.

SCHEDULE "A."

Real Estate.

House and premises No. 943 O street northwest, in the city of Washington, District of Columbia, subject to deed of trust to secure note for $8,000 and interest; house and premises No. 1523 8th street northwest, in said city, subject to deed of trust to secure note for $4,500 and interest; estate for life of said party of the first part in twenty-five acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A. No. 11, folio 241 *et seq.*, of the land records of said county.

JNO. B. SCOTT.

SCHEDULE "A" (Continued).

Personal Estate.

Household furniture, fixtures, and personal effects in the National hotel, in the city of Washington, D. C., valued at	$90,000
Merchandize in store-room	750
Fuel	100
Due from boarders	2,619
Due from transient guests	1,000
Bill receivable	409.90
Due from trade ac	373
Cash on hand	100

Household furniture, fixtures, and effects in Howard house, Washington, D. C., valued at $3,500, subject to chattel deed of trust for same amount.

JNO. B. SCOTT.

15 SCHEDULE "B."

Liabilities.

Bills payable.

Geo. Little, demand					$1,000	Washington, D. C.
" "					300	Do.
F. Tenney, 3 yrs.					6,765.34	Do.
F. Tenney, Mrs. Stewart	Due	18	21	May	2,000	Do.
F. Tenney, Lanaher & Son	"	13	16	June	3,000	Do.
John T. Kelley	"	2	5	May	300	Washington.
Browning & Middleton	"	22	25	Ap'l.	201.13	Do.
" " "	"	24	27	"	210.65	"
F. Tenney	"	'97, '98, '99			7,795.64	"
Beal & Baker	"	27	30	Ap'l.	106	"
Cathwood	"	27	30	"	160	Phila.
Davis, Water & Co.	"	30	2	June	112.08	
Mayfield & Heisler	"	24	27	Ap'l.	150	Geo'town, D. C.
Lansburgh & Bro.	"	30	2	May	475	Wash., D. C.
Thos. Somerville	"	30	2	"	116.89	Do.
Dexter & Co.	"	3	6	May	300	"
Kelly & Chamberlin	"	5	8	"	396.93	"
Wilson & Rogers	"	12	15	"	183.96	"
Wm. Galt	"	15	18	"	1,000	"
Wash. B. Williams	"	19	22	"	308.44	"
Mayfield & Hieston	"	19	22	"	400	Geo'town, D. C.
Browning & Middleton	"	21	24	"	295.80	Wash.
Browning & Middleton	"	24	27	"	295.80	"
" " "	"	25	28	"	295.82	"
Edward Heald	"	21	24	Ap'l.	150	Do.
James E. Clark	"	21	24	May	700	"
Browning & Middleton	"	25	28	"	193.32	"
F. T. Chamberlin, W. B.	"	26	29	"	250	"
T. D. Daly	"	27	30	Ap'l.	200	"
W. H. Crosby	Due	29	2	May	350	Wash.
Kelley & Chamberlin		4	7	June	421.50	"
Independent Ice Co.		4	7	June	266	"
M. F. Brennan		5	8	June	224.87	"
F. Tenney (Lanahan)		28	31	May	1,300	"
J. G. Slater		5	8	May	500	"
Ed. Sweeney		6	9	M'ch, '97	1,500	"
F. Tenney		6	9	July	650	"
Mayfield & Heiston		10	13	June	408.85	Geo'town, D. C.
" " "		12	15	"	400	
Ind. Ice Co.		13	16	"	300	Wash.
R. M. Jones & Co.		17	20	"	202.85	Do.
T. T. Keane		17	20	"	242.36	Wash., D. C.
Wilson & Rogers	"	16	19	"	202.61	"
R. H. Marshall	"	19	22	May	700	"
C. E. Hoover	"	19	22	June	300	"
Browning & Middleton	"	18	21	"	500	"
W. Burton	"	23	26	"	2,500	"
Browning & Middleton		26	29	Apr.	571.93	"
J. B. Scott	"	23	26	June	2,500	"
Green & Brennan	"	21	24	Apr.	316.81	"
J. B. Scott	"	23	26	June	900	Wash., D. C.
Ed. Sweeney	"	23	26	July	488.75	"
Browning & Middleton	"	27	30	"	285.96	"
Ed. Head	"	26	29	May	400	"
R. Callahan	"	26	29	June	800	"
E. O. Whitford & Co.	"	25	28	Ap'l.	123.85	"
Mayfield & Heaston	"	26	29	June	200	Geo'town, D. C.
F. Tenney	"	27	30	June	2,000	W. city, D. C.
Browning & Middleton	"	30	3	"	800	Do.
C. E. Hoover	"	30	2	May	200	Do.

16	Browning & Middleton.	Due	1/3	July		466.90	W. city, D. C.
	" " "	"	"	"		200	"
	Kelley & Chamberlin	"	1/4	July		268.65	"
	M. F. Brennan	"	1/4	June		154.46	"
	A. Mann	"	7/10	May		100	"
	Wilson & Rogers	"	8/10	July		158.19	"
	W. H. Butler	"	9/12	July		259.33	"
	Deiter & Co.	"	9/12	July		104.82	"
	" " "	"	8/11	June		100	
	J. F. Kelley	"	5/8	"		250	"
	T. W. Smith	"	9/12	July		83.92	"
	Mayfield & Hastings	"	10/13	"		150	Geo'town, D. C.
	T. E. Kann	"	10/13	June		849.64	Washington, D. C.
	W. B. Moses	"	11/14	"		380	"
	" " "	"	11/14	July		376.71	"
	E. O. Whitford	"	11/14	May		251.81	Do.
	E. Greenapple	"	13/16	June		365.30	W. city, D. C.
	W. H. Crosby	"	28/1	Apr.		300	Wash. city, D. C.
	Lansburgh & Bro.		13/16	July		200.00	Do.
	Lanahan & Son		16/19	May		256.00	Balto., Md.
	F. D. Daly		15/18	July		600.00	W. city, D. C.
	Ind. Ice Co.		16/19	"		350.00	"
	F. Tenney		16/19	"		500.00	"
	" "		16/19	"		1,100.00	"
	T. Summerville		17/20	June		81.47	"
	N. W. Beverage		17/30	"		129.63	"
	J. L. Barbour & S.		20/23	July		400.00	"
	Dexter & Co		20/23	"		600.00	"
	W. B. Williams		20/23	"		450.00	"
	Mayfield & Heiston		20/23	"		275.00	Geo'town, D. C.
	J. E. Clark	Due	20/23	July		450.00	W. city, D. C.
	Robinson, Chery & Co.		20/23	June		100.00	Do.
	M. F. Brennan		20/23	July		200.00	"
	Browning & Middleton		21/24	"		250.00	"
	Mayfield & Heiston		21/24	"		500.00	"
	" " "		22/25	"		175.00	"
	Wilson & Rogers		23/26	Jan.		100.00	"
	Browning & Middleton		23/26	July		270.00	"
	Mrs. H. Stewart		24/27	June		1,300.00	Do.
	H. P. Moore					1,500.00	"
						61,825.97	

JNO. B. SCOTT.

Acc'ts payable.

Kelly & Chamberlin	322.46	Washington, D. C.
Wilson & Rogers	110.73	Do.
T. T. Keldue	669.56	Do.
E. Greenapple	673.56	Do.
E. O. Whitford & Co.	140.04	Do.
W. T. Brender	52.34	Do.
R. W. Jones & Co.	28.34	Baltimore.
C. D. Kenney	15.00	Washington, D. C.
M. W. Beaveradge	11.50	Washington, D. C.
R. B. Earnshaw	4	Do.
W. G. Orr & Co.	.58	Do.
Ind'p't Ice Co.	113.13	Do.
Browning & Middleton	869.39	Do.
Holland Steamboat Co.	133.01	New York.
Albert Moses	24.50	Washington, D. C.
Dexter Laundry Co.	73.74	Do.
Manfield — Haeston	248.35	Georgetown, D. C.
J. L. Barbour & Son	49.50	Washington, D. C.
Woodward — Lothr	347.95	Do.
Md. Leth. Groff Co.	262.58	Balto., Md.
D. T. Bizby & Co.	38.10	Balto., Md.

17	Beente Slaon'r	31.00	W. city, D. C.
	H. R. *Barlerr*	15.04	Lives, Del.
	Washington Post	15.00	Washington.
	Boston *Commi*	60.00	Boston, Mass.
	Encaster May Co	42.00	Cohoes, N. Y.
	Dranell & *Memor*	24.00	New York.
	Norris Peters & Co	75.00	Washington, D. C.
		4,350.80	
	Hon. Blair	33.33	Washington, D. C.
	Miller — Rolla	84.33	Do.
	Johnson & Moses	18.00	Do.
	W. Market Co	50.36	Wash., 1860-'2.
	Rent due Nat. Hotel Co	6,378.42	Washington.
		10,945.24	

APRIL 23, 1896.

Accounts and Bills Payable by the Howard House.

Mrs. F. Greenapple, Washington		816.11
J. L. Barbour & Son,	do.	86.20
Whiteford & Co.,	do.	202.35
W. S. Monge & Bro.,	do.	85.20
Miller & Rolla,	do.	110.25
Broad River Car Co., Virginia		10.40
Wilkins & Co., Washington		37.05
Phillip Lang, Balt., Md		50.00
Omeldorf & Taxon, Washington		40.70
Md. Lithography Co., Balt., Md		12.75
Cacrophito Co., New York		21.25
Montecello wine, Virginia		9.67
Ad. in Bethel Cadet, "		5.00
F. Libley & Co., Washington		5.00
Was. Inolin Co., New York		17.05
Market Co., Washington, D. C		33.90
F. I. Hunt, Pennsylvania		50.00
Geo. S. Seage, Washington, D. C		31.50
W. G. Orr,	Washington, D. C	3.55
U. S. Elec. Light Co.,	city, D. C	9.20
Boston Courier, Bost., Mass		20.00
W. A. Marean, Washington, D. C.,		22.00
Mrs. F. Greenapple		154.23
Secured in part by chattel mortgage.	H. Browning	2,950.00
	Browning & Middleton	800.00

JNO. B. SCOTT.

DISTRICT OF COLUMBIA, *To wit:*

I, John B. Scott, do swear that I am the party grantor in the foregoing indenture, and that the above inventory of my real and personal estate is correct according to the best of my knowledge; and, further, that the foregoing list of my creditors, their respective residences and places of business, and the amount of their respective demands is also correct according to the best of my knowledge; and it is my intention that, should there be others whom I have overlooked, they shall be included in the benefit of this assignment, and that any errors in amounts specified should be corrected.

JNO. B. SCOTT.

18 Subscribed and sworn to before me this 24th day of April, A. D. 1896.

AUGUSTUS P. SCHELL,
[NOTARIAL SEAL.] *Notary Public.*

DISTRICT OF COLUMBIA, *ss:*

I, Augustus P. Schell, a notary public in and for the District aforesaid, do hereby certify that John B. Scott and Horatio Browning, parties to a certain deed bearing date on the 24th day of April, A. D. 1896, and hereto annexed, personally appeared before me, in the District aforesaid, they being personally well known to me to be the persons who executed said deed, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this 24th day of April, A. D. 1896.

AUGUSTUS P. SCHELL,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2125, fol. 41 *et seq.*, one of the land records of the District of Columbia.

Office of the recorder of deeds, Washington, D. C., August 25, 1898.

[STAMP.] GEO. F. SCHAYER,
Dep. Recorder of Deeds.

Decree Overruling Demurrer, &c.

Filed November 1, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs,
vs.
HORATIO BROWNING ET AL., Defendants. } Equity. No. 19686.

This cause coming on to be heard on the demurrers of the defendants Browning, Middleton, Keane, The Central National Bank, and Whitford, and having been argued by counsel, and the court being sufficiently advised—

It is, this 1st day of November, 1898, adjudged, ordered, and decreed that said demurrers be, and they are each and all overruled, and that said defendants have leave to answer within twenty days.

It is further ordered that the temporary injunction heretofore granted, as prayed in the bill and as modified by the subsequent order of August 26, be continued in force until the final hearing.

A. B. HAGNER,
Asso. Justice.

19

Order for Appeal.

Filed November 10, 1898.

Court of Appeals of the District of Columbia.

No. —, Original, October Term, 1898.

THOMAS T. KEANE, CENTRAL NATIONAL Bank of Washington, Horatio Browning, Alpheus Middleton, Edward D. Whitford, Petitioners, *vs.* GEORGETTE A. CHAMBERLIN ET AL.	In Equity. No. 19686.

On consideration of the petition for the allowance of an appeal in this cause from an order of the supreme court of the District of Columbia passed in this cause on the 1st day of November, A. D. 1898, continuing the injunction during the pendency of said cause, it is now here ordered by the court that this appeal be, and the same is hereby, allowed.

Per MR. CHIEF JUSTICE ALVEY.

November 8, 1898.

A true copy.
Test:
[SEAL.] ROBERT WILLETT, *Clerk.*

Endorsed.

The clerk will prepare transcript of record for Court of Appeals, giving copies of original bill and its exhibits, demurrer of defendant Thos. T. Keane, orders granting restraining order, modifying same, and order continuing same, with mem. of dates of demurrers filed by other def'ts.

A. A. BIRNEY,
Of Counsel for Appellees.

Order for Citation.

Filed November 11, 1893.

In the Supreme Court of the District of Columbia, the 11th Day of November, 1898.

GEORGE A. CHAMBERLIN ET AL. *vs.* THOMAS T. KEANE ET AL.	At Law. No. 19686.

The clerk of said court will issue citation on the appeal of Thomas T. Keane, Horatio Browning & Alpheus Middleton, Central
20 National Bank, & Edward O. Whitford, to all the complainants named in the bill.

A. A. BIRNEY AND
ARTHUR PETER,
Of Counsel for Appellants.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt, Pl'ffs,	No. 19686. In Equity.
vs.	
HORATIO BROWNING, JOHN B. SCOTT, ALPHEUS Middleton, Thomas T. Keane, The Central National Bank of Washington, Edward O. Whitford, and Timothy D. Daly, Defendants.	

The President of the United States to Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the last two trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, trading as Kelley and Chamberlin, and William Galt, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed by the Court of Appeals of the District of Columbia on the 8th day of November, 1898, wherein Thomas T. Keane, Horatio Browning, Alpheus Middleton, The Central National Bank of Washington, and Edward O. Whitford are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 8th day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 18th day of November, 1898.

O. B. HALLAM,
Attorney for Appellees.

21 *Memorandum.*

November 18, 1898.—Appeal bond filed.

Supreme Court of the District of Columbia

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 37, inclusive, are true copies of originals in cause No. 19686, in equity, wherein Georgette A. Chamberlin *et al.* are complainants and Horatio Browning *et al.* are defendants, as the same remains upon the files and of records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 19th day of November, A. D. 1898.

JOHN R. YOUNG, *Clerk*.

[Ten-cent U. S. internal-revenue stamp, canceled 1898. J. R. Y.]

Endorsed on cover: District of Columbia supreme court. No. 860. Thomas T. Keane *et al.*, appellants, *vs.* Georgette A. Chamberlin *et al.* Court of Appeals, District of Columbia. Filed Nov. 21, 1898. Robert Willett, clerk.

22 THURSDAY, *December 8th, A. D.* 1898.

THOMAS T. KEANE, HORATIO BROWNING, ALPHEUS MIDDLETON, The Central National Bank of Washington, and Edward O. Whitford, Appellants,
vs.
GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt. } No. 860.

The argument in the above-entitled cause was commenced by Mr. Arthur Peter, attorney for the appellants.

FRIDAY, *December 9th, A. D.* 1898.

THOMAS T. KEANE, HORATIO BROWNING, ALPHEUS MIDDLETON, The Central National Bank of Washington, and Edward O. Whitford, Appellants,
vs.
GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt. } No. 860.

The argument in the above-entitled cause was continued by Mr. Arthur Peter, attorney for the appellants, and by Mr. O. B. Hallam,

attorney for the appellees, and was concluded by Mr. A. A. Birney, attorney for the appellants.

23 THOMAS T. KEANE ET AL., Appellants, vs. GEORGETTE A. CHAMBERLIN ET AL. } No. 860.

Opinion.

Mr. Justice SHEPHARD delivered the opinion of the court:

The appeal in this case is from an order overruling a demurrer to the appellees' bill, and was allowed November 8, 1898, upon the special grounds set forth in the petition therefor.

The bill alleges that all the parties, complainants and defendants, are citizens of the United States and residents of the District of Columbia.

The substantial facts alleged in the bill are these:

On April 24, 1896, defendant Scott, then engaged in business in said District, made an assignment for the benefit of his creditors to defendant, Horatio Browning, assignee. Said Browning was then a partner with one Middleton, who is also a defendant, under the name of Browning & Middleton.

The said deed of assignment conveyed to said Browning, assignee,

24 "all and singular the real estate, goods, chattels, merchandise, effects, stocks, promissory notes, debts, claims, demands, and property" of the said Scott, excepting legal exemptions and declared the same to be fully described in Schedule A thereto annexed.

Schedule A gives a list of certain property not necessary to be mentioned here, and contains the following recital: "Estate for life of said party of the first part in twenty-five acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A., No. 11, folio 241 *et seq.* of the land records of said county."

The deed referred to was made by John D. Coughlan to said Scott. Scott was the owner in fee-simple of said land and on October 17, 1888, conveyed it to Coughlan. Coughlan on the next day reconveyed the same to Scott, his heirs and assigns to the use of Scott, his heirs and assigns, upon the following trusts:

"In trust for the said John B. Scott during his life to retain possession of said parcel of land and premises, without impeachment for waste, and receive the rents, issues and profits thereof for his own use and benefit, and from and after his death to hold said parcel of land and premises unless the same shall be disposed of as hereinafter authorized for the use and benefit of Mary Elizabeth Scott and Margaret Adelia Scott, daughters of said John B. Scott, their heirs and assigns forever, as tenants in common; and upon this further trust, that said John B. Scott shall have full power and authority to lease or sell said parcel of land or any part thereof from time to time and convey the same in fee-simple absolute or by way of mortgage, deed of trust or otherwise, and upon such terms and

for such conditions as said John B. Scott may deem fit, and without obligation on the part of the purchaser to see to the application of the purchase-money or the person lending money to see to the application thereof, and to devise and to dispose of said parcel of land and premises by last will and testament executed according to law."

The deed of assignment was regularly executed by Scott and Browning as assignee, and each and all of the defendants had actual and constructive notice of the same, and elected to accept its provisions by attending creditors' meetings called by the assignee. All of the defendants, as well as the complainants, were creditors of said Scott. The instrument was recorded by the assignee in the District of Columbia, May 10, 1896, and in Montgomery county, Maryland, on June 3, 1896.

Before the record in Montgomery county, one of defendants, Thomas T. Keane, filed actions of debt in the circuit court of said county against Scott and sued out attachments that were levied upon the said land.

After the date of the record the other defendants, including Browning and Middleton, brought their separate actions of debt in the circuit court of Montgomery county, Maryland, against Scott, and caused attachments to be levied on said land also.

Keane obtained judgments of condemnation on November 11, 1896, which were followed in March, 1897, by similar judgments in favor of the other attaching creditors aforesaid.

The assignee, Browning, filed another suit in his own name in December, 1897, with an attachment in which judgment of condemnation was entered January 17, 1898.

On December 22, 1896, Keane, upon his judgments aforesaid, filed a bill in equity in the circuit court of Montgomery county, Maryland, against said Scott, and his daughters, Mary Elizabeth and Margaret Adelia Scott, and said John D. Coughlan to set aside said conveyances on the ground that they had been made without consideration and for the purpose of hindering, delaying and defrauding creditors, and so forth.

A decree was passed in said suit July 16, 1897, annulling the said deeds in so far as they might affect the rights and claims of said Keane as creditor, and this decree was affirmed by the court of appeals of Maryland on June 28, 1898.

On July 23, 1898, Keane filed the mandate of the court of appeals and procured a writ of *fieri facias* to issue to the sheriff of said county upon his judgment of condemnation. The sheriff has advertised the land, which is worth about $15,000, for sale on August 27, 1898, which if proceeded with will cause the sacrifice thereof for an inadequate price. It is also alleged:

"That it was the intention of said Scott, well known to said Browning, to convey, as he states in his deed of assignment, all his property except legal exceptions, and the use of the term 'estate for life' in reference to the Maryland land was an attempt to describe all the interest which he had therein, and had he known that the courts would hold that the deed under which he held was constructively fraudulent in its limitations and vested in him the fee-

simple he would have so listed it in his schedule. The proper construction that should be given the granting clause and schedule together is that all title which said Scott had in said land passed by the deed of assignment, and in any event, as plaintiffs are advised, believe, and therefore allege, the grantor being a resident of the District of Columbia and the deed of assignment having been made in said District, it vested in the assignee all property of said Scott, wherever situated, irrespective of the schedule, at least so far as concerns citizens or residents of said District; that it was the duty of said assignee to at once take possession of said Maryland farm, as well as all other property, which he failed and neglected to do, but instead thereof attempted and undertook, as hereinafter stated, to ignore said deed of assignment so far as related to said farm and to convert same, in part at least, to his own use."

Other allegations of acts of Browning, inconsistent with his duty and obligation as trustee, are also made, and the prayers for relief, omitting the first as merely formal, are:

"Two. That the defendant Browning be rerequired with his answer to exhibit an account of the assets that came to his hands and of the manner in which he has disposed of same.

Three. That the defendant Scott in his answer disclose the location and character of any property not mentioned in the schedule, but owned by him at date of the assignment.

Four. That said Browning be removed as assignee and a trustee appointed in his stead to execute said trust, and said Browning required to turn over to him any balance or assets in his hands.

25 Five. That said Scott be required, if need be, to execute to said new trustee a deed more specifically conveying the fee-simple title to said Maryland land.

Six. That the attaching creditors be restrained, pending this action, from in any manner proceeding to enforce their said attachments on judgments of condemnation against said Maryland land, and from doing any act or thing to hinder, delay, or interfere with the control or management of the estate abroad for the equal benefit of all said Scott's creditors, and from in any way seeking to secure to themselves any greater benefit or interest out of said estate and effects than shall represent their '*pro rata*' share under said assignment, and that on final hearing such injunction be made perpetual.

Seven. Or, if this cannot be done, that the attaching creditors be directed to bring into court any moneys realized from said land, and that the same be treated as assets passing by said deed of assignment, and distributed among the creditors as therein directed.

Eight. For a reference then to the auditor for proof of claims and for the taking and stating an account with the assignee, Browning.

Nine. And for such other and further relief as to the court may seem right and proper."

A restraining order was granted August 25, 1898, returnable on August 29.

This was modified on August 26, 1898, "so that it shall not inter-

fere with the right of the defendant, Thomas T. Keane, to allow or cause the sale advertised under the writ of *fieri facias* to proceed."

Defendants joined in a demurrer to the bill which was overruled on November 1, 1898, and the temporary injunction, granted and modified as aforesaid, was continued in force until the final hearing.

It was stated on the argument and accepted as a fact in the case, that the sale was made under execution as advertised, and that the land brought the sum of $8,500.

It appears, by inference from the omission of an allegation in the bill relating thereto, and by practical concession on the argument, that no bond was filed by the assignee in the State of Maryland as required by statute in the case of assignments for the benefit of creditors. Code of Maryland, art. 16, sec. 205.

1. The first contention of the appellants is, that the demurrer should have been sustained because the courts of the District of Columbia, being courts of the United States, have no jurisdiction, under any conditions whatsoever, to enjoin a party from proceeding in the courts of a State.

This is founded on the prohibition contained in section 720, R. S., which reads thus: "The writ of injunction shall not be granted in any court of the United States to stay proceedings in any court of any State, except in bankruptcy proceedings."

This statute, enacted originally in 1793, was intended to prevent unseemly conflicts that might occur between the courts of the several States, and the Federal courts exercising jurisdiction within their limits, and has always received liberal interpretation to that end. Diggs *v.* Wolcott, 4 Cranch, 179; Peck *v.* Jenness, 7 How., 612, 625; Watson *v.* Jones, 13 Wall., 679, 719; Haines *v.* Carpenter, 91 U. S., 254, 257; Dial *v.* Reynolds, 96 U. S., 348, 350; *In re* Sawyer, 124 U. S., 200, 220; see, also, Dillon *v.* K. C., etc., R'y Co., 43 Fed. Rep., 545.

As the courts of the District of Columbia are necessarily courts of the United States, they are included within the broad letter of the statute. U. S. *v.* Mills, 11 App. D. C., 500, 505.

In another sense also, the statute may be regarded as declaratory of an established principle of comity between courts, through the operation of which, when the jurisdiction of one court and the right of a party to prosecute his suit have attached, another court will not undertake to arrest the proceedings. Peck *v.* Jenness, 7 How., 624.

It must, however, be borne in mind, in considering the effect and operation, within the limits of the District of Columbia, of the general statutes relating to the courts of the United States, and some other subjects, that the courts of general jurisdiction of the District have, since the cession of its territory by the State of Maryland, been necessarily invested with the jurisdiction over persons and property therein that was formerly exercised by the courts of that State, and that is now in general exercised by the courts of the several States within their respective limits, in addition to such as were formerly exercised by the courts of the United States for the State of Maryland.

For the reason that the general laws of the United States did not, and could not provide for all the conditions existing at the time of the cession, and to prevent confusion, it was at once enacted that the laws of Maryland, not necessarily inconsistent with the change of sovereignty, should continue in force until modified or repealed by Congress; and notwithstanding the lapse of nearly one hundred years they now constitute the greater and more important part of our written law.

One effect of the peculiar conditions in respect of the jurisdiction over persons and property created by the cession of the District, was to raise doubts whether general acts of Congress, adapted to the conditions of the authority of the United States throughout the States and Territories of the Union generally, should be regarded as changing the laws of the District without the express declaration, or the necessary implication, of such a purpose; for it would sometimes happen that such a law, demanded by and enacted for conditions existing elsewhere, would tend to create confusion and embarrassment in the District because inconsistent with the great body of its law.

This, doubtless, led to the enactment now found in section 93, R. S. D. C., as follows: "The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States." And this test we have had occasion several times to apply in determining whether a general law, in any or all of its provisions, was intended to have operation in the District of Columbia. Knight *v.* United States, 6 App. D. C., 1, 5; Chase *v.* United States, 7 App. D. C., 149, 156; United States *v.* Mills, 11 App. D. C., 500, 504, 506.

The original act now embodied in section 720, R. S., was enacted before the cession, and it may be that it is not locally appli-
26 cable for the reason that the apprehended conflicts of jurisdiction sought to be prevented thereby cannot occur in the District because its courts are undivided and represent but one authority. Courts of the United States, elsewhere, sit within the States, and their process runs to the limits of their designated districts which are sometimes coextensive with the limits of the State. Within those limits the party seeking redress may have it as well in the courts of one as of the other, and there is every reason why, upon general principles, he should be compelled to litigate in the State tribunal when it has already acquired jurisdiction of the subject-matter and of some at least of the parties. Moreover, the jurisdictional requirements of the United States courts in a State, in respect of diverse citizenship, would render it next to impossible for them to exercise a restraining power over the citizens of the States of their location in the matter of litigation in foreign States like that common in the State tribunals. It may be, therefore, that the section aforesaid ought not to be construed as operating to exclude the jurisdiction of the courts of the District in such cases, as the successors of the tribunals of the State of Maryland, or, in other words, as taking away a jurisdiction which, if the District were still a part

of the State of Maryland, would undoubtedly exist in the courts of that State. Dehon *v.* Foster, 4 Allen, 545; Cole *v.* Cunningham, 133 U. S., 107.

This question is one of importance and difficulty, and as the case can be fully and finally disposed of without its determination, we prefer to pass it until such time as it may come before us, of necessity, and receive re-examination and more careful consideration.

2. Passing the question, then, of the effect of the statute aforesaid upon the complainants' right to the relief prayed for, we come to the second ground of the contention in support of the demurrer, which, for convenience of consideration, will be separated into the several propositions that it involves.

(1.) It is entirely outside of the case to consider the operation of the provisions of the assignment act of Congress of February 24, 1893, in working a conveyance of the title of all property owned by the assignor Scott, whether recited inaccurately in the schedules attached to the deed of assignment, or omitted altogether therefrom.

The only property within the comprehension of this case is the land situated in Montgomery county, Maryland; and the act in force in the District of Columbia cannot affect the transmission of its title. The operation of the deed of assignment as a conveyance of its title must depend solely upon the laws of Maryland; for it is an unquestionable principle of law, here and everywhere, that the title and disposition of real property are exclusively subject to the laws of the State wherein it lies, which can alone prescribe the mode whereby the title can be passed from one person to another. McCormick *v.* Sullivant, 10 Wheat., 192, 202; United States *v.* Fox, 94 U. S., 315, 320; Robertson *v.* Pickrell, 109 U. S., 608, 611; Schley *v.* Pullman Car Co., 120 U. S., 575, 580; Langdon *v.* Sherwood, 124 U. S., 74, 81; Arndt *v.* Griggs, 134 U. S., 316, 321.

And, necessarily, the same rule that governs in the case of the transmission of title by deed or will applies also in the case of an assignment for the benefit of creditors. Loving *v.* Pairo, 10 Iowa, 282, 287; Gardner *v.* Commercial Bank, 95 Ill., 298, 304; Jenks *v.* Ludden, 34 Minn., 482, 486; Thompkins *v.* Adams, 41 Kan., 38, 48.

Cases cited on behalf of the appellees, and others likewise, go no further than to hold that, where an assignment for the benefit of creditors has been made in one State, it will pass the title to personal, and sometimes to real property in another when the deed of assignment, in its form and execution, is in substantial compliance with the laws of the latter State regulating conveyances of the title to such property, and conflicts only in some of its administrative features with the local law regulating the administration of such trusts for the benefit of creditors, when the question arises between the citizens of the State where the assignment was executed, and when the latter does not expressly contravene the laws and established public policy of the State where the property is situated. Juillard *v.* May, 130 Ill., 87, 96. See, also, Green *v.* Van Buskirk, 5 Wall., 307, 311, 312; Hervey *v.* R. I. Locomotive Works, 93 U. S., 664, 671; Cole *v.* Cunningham, 133 U. S., 107, 128.

(2.) Tested by the law of Maryland, the assignment, even if — be conceded that the assignor, Scott, had a greater than a life estate in the land, would pass nothing more than the latter as described in the schedule. Under the law prevailing in that State, the general words of the assignment are restricted by the particular description of the schedule which is made a part of it. Mims *v.* Armstrong, 31 Md., 87, 94.

Again, Scott having a life estate in the land coupled with a power of alienation of the fee by deed or will, his conveyance of the life estate, without reference to the power, passed that estate and nothing more. Ridgely *v.* Cross, 83 Md., 161. And that case is but the declaration of the rule of construction that generally prevails. 2 Perry on Trusts, sec. 511*c*; 4 Kent Comm. (12 ed.), 334, 335.

Under the foregoing decisions declaring the law of Maryland, all that could be treated as conveyed by the deed of assignment is the life estate of Scott as recited in the schedule. But it further appears, by operation of the law of Maryland, that no title of any nature whatsoever passed to the assignee because of his failure to enter into the bond required by the statute of the State in all cases of assignments for the benefit of creditors. Sec. 205, art. 16, of the Code of Maryland provides that every trustee to whom property shall have been conveyed for the benefit of creditors shall enter into and file a bond in the proper court, and declares that "no title shall pass to any trustee as aforesaid until such bond shall be filed and approved as aforesaid, and no sale made by any trustee without such bond shall be valid or pass any title to such party."

Under the construction given this statute, no title whatever passes either to personal or real property until the bond has been given; and a lien acquired by attaching creditors after the date of the assignment is not affected by the subsequent execution and approval of the bond. Barton *v.* Stieffel, 73 Md., 408, 410; Fidelity & Dep. Co. *v.* Haines, 78 Md., 454, 457; White *v.* Bank, 80 Md., 1, 5.

27 (3.) Even were the law of Maryland otherwise, and it were conceded also that an injunction would clearly lie to prevent a creditor within this jurisdiction, from prosecuting an attachment suit against the property of the assignor in Maryland, the bill therefore comes too late after the complainants have stood by without action here, or intervention there, and permitted that suit to ripen into judgment.

That complainants were not parties to that proceeding, or that Scott may not even have been brought before the court in person, are matters of no consequence in so far as the effect of that judgment comes under consideration in this case. Inasmuch as it was a valid judgment of condemnation, subjecting the attached property to the payment of the demand found to exist for that purpose, pronounced by a court of unquestioned jurisdiction in the premises, it would have the same effect if pleaded in defense to an action here, that it has in Maryland. Green *v.* Van Buskirk, 7 Wall., 139, 148; S. C., 5 Wall., 307, 312; Cole *v.* Cunningham, 133 U. S., 107, 133.

For stronger reasons, if possible, no court of another jurisdiction should undertake to thwart its regular execution in the interest of

the party entitled thereto, by exerting coercion upon him when he may happen to be within its power.

In Green *v.* Van Buskirk, *supra*, all of the interested parties were citizens and residents of New York, where the chattel mortgage was made by Bates to Van Buskirk. Green attached the personal property, so conveyed, in the courts of Illinois, where it was then situated, procured its condemnation and sale, and appropriated the proceeds. Van Buskirk sued him in New York to recover the value of the converted property. Van Buskirk was not a party to the attachment suit, nor was Bates by personal service. It was held, nevertheless, that the judgment so obtained, having that effect in Illinois, was a bar to the action.

In the later case of Cole *v.* Cunningham, *supra*, wherein an injunction, issued by a State court of Massachusetts to restrain a citizen of that State from the prosecution of an attachment suit in the State of New York, was upheld, it was said, after quoting with approval from Green *v.* Van Buskirk, that:

"It will be perceived that it was manifestly inadmissible to hold that after Van Buskirk had permitted Green to go to judgment in a proceeding *in rem*, which appropriated the property as belonging to Bates, he could then get judgment against Green for the conversion of what had been so adjudged to him, an adjudication which Van Buskirk had voluntarily declined to litigate in the proper forum, and had not sought in his own State to prevent. It was a contest between two individuals claiming the same property, and that property capable of an actual *situs*, and actually situated in Illinois. The attachment was not only levied in accordance with the laws of Illinois, but the laws of that State affirmatively invalidated the instrument under which Van Buskirk claimed. Clearly, then, the law of the domicile of Van Buskirk, Green and Bates could not overcome such registry and other positive laws of Illinois as were distinctly coercive."

The proceeding in this case is substantially a suit in equity to recover and subject the proceeds of land situated in Maryland, that has been condemned and sold under a judgment of a court of that State, to a demand acquired under an instrument which, by the law of Maryland, had no force or effect as a conveyance of title; and, therefore, comes directly within the rule enounced in Green *v.* — Buskirk, and approved in Cole *v.* Cunningham.

The proper place for the complainants to maintain their claim was in the courts of Maryland which had jurisdiction of the subject-matter, and whose laws exclusively governed its disposition.

They, however, not only kept out of the litigation in Maryland of which they had knowledge in time to join before the judgment of condemnation was rendered, but also stood by and permitted the defendant Keane to undertake the labor and expense of the subsequent litigation with Scott, and his daughters, who claimed the remainder upon the termination of his life estate, that resulted in annulling the conveyance, under which they claimed, as in fraud of creditors, and without which result the condemnation judgment

would have been of little or no value. See Scott *v* Keane, Maryland court of appeals, April term, 1898.

3. It is independently contended by the appellees, in support of the decree overruling the demurrer, that an injunction properly lies to prevent the appellants from appropriating the proceeds of the condemnation judgment in Maryland, and to compel them to bring the same into the proper court of this District for distribution among all the creditors of Scott, on the ground that, by reason of their former acceptance of the assignment, they are estopped to deny its sufficiency as a conveyance of the Maryland land.

It would be sufficient to say that this contention is fully met by what has heretofore been said in respect of the exclusive jurisdiction of the Maryland courts in the premises; for it is an attempt to accomplish indirectly that which cannot be done directly by the courts of this District, namely, to give effect to an instrument, as a conveyance of title in Maryland, that is in contravention of the laws of that State, as well also to prevent the execution of a judgment regularly obtained in that State. A proceeding that would work that result in any manner is beyond the jurisdiction of our courts. The courts of Maryland are open to the maintenance of the same right, and to them the parties must resort for relief.

The case of Kendall *v.* Coke Co., 182 Pa. St., 1, that is relied on by the appellees, is not applicable to all the phases of the question as here presented. It is true that the assignment made in Pennsylvania by a resident debtor was conceded to be insufficient in its terms to pass the complete title to land in Florida under the laws of the latter State. A resident creditor, having accepted benefits under the assignment, was declared estopped to claim against it elsewhere, and an injunction was granted restraining him from prosecuting an attachment suit that he had commenced in Florida. The important distinction between that case and this, is, that the attachment proceedings in Florida had not progressed to judgment of condemnation.

28 In Groves *v.* Rice, 148 N. Y., 227, the parties were all citizens of New York, the property was situated therein, and the familiar principle of estoppel by reason of the acceptance of benefits under the trust was applied, and nothing more.

With great respect for the justly distinguished court that decided the case of Kendall *v.* The Coke Co., *supra*, it seems to us that both the effect of the assignment as a conveyance of the title to the land by virtue of its terms and the manner of its execution, and the question of the party's conduct in giving it effect by way of estoppel, ought to have been submitted for determination by the courts of the State where the land was situated, as was the case in Moore *v.* Church, 70 Iowa, 208. In that case the assignment made in New York by a citizen thereof was in accordance with the law of that State. As a part of the assignment, the assignor made a separate conveyance of the land which was executed in conformity with the law of Iowa, where the land was situated. A creditor in New York became a surety upon the bond of the assignee, and subsequently brought a suit against the assignor in Iowa, and sued out an attach-

ment that was levied upon the said land. He also filed his claim for the debt with the assignee in New York and asked for his distributive share of the estate upon whatever part thereof might remain unsatisfied after crediting the sum that might be realized through his proceeding in Iowa.

The assignment, in so far as it was sought to give it operation in Iowa, was declared void because in contravention of a statute of that State which forbade preferences in an assignment for the benefit of creditors. It was also held that the attaching creditor was not estopped to have the assignment, and the conveyance executed in order to give it effect annulled, by reason of his having become surety for the assignee in New York, or having preferred his claim there against the assigned estate. His conduct, it was said, could go no farther than to estop him to deny the validity of the assignment in New York in respect of the property situated there.

Now it may be, that, in the distribution of the proceeds of the property in the District, the defendants would each be denied participation unless they should first account for the proceeds of the Maryland litigation; or, that they would, at least, be limited therein to their proper proportion after crediting them with the amounts so realized. But these are questions that can only arise on the distribution of the estate when made, and we are not to be understood as expressing any opinion in respect to their determination.

4. In addition to the matters that have been discussed, the bill alleges acts of misconduct on the part of the assignee and prays his removal and the appointment of another. There are also prayers for discovery and for an account by the assignee of property that may have come into his possession in that right. The assignor, Scott, is also called upon for discovery in respect of any property that he may have that is not described in his schedules. These questions are not before us on this appeal, and it may be that the complainants would be entitled to maintain their bill, with or without amendment, for relief therein and perhaps in other particulars.

The decree will therefore be reversed with costs, and the cause remanded, with direction to sustain the demurrer, dissolve the injunction and dismiss the bill as to the appellants, Thomas T. Keane, Alpheus Middleton, The Central National Bank of Washington, Edward O. Whitford and the partnership of Browning & Middleton; and for further proceedings not inconsistent with this opinion. It is so ordered.

Reversed.

29 THURSDAY, *January 12th, A. D.* 1899.

THOMAS T KEANE, HORATIO BROWNING, Alpheus Middleton, The Central National Bank of Washington, and Edward O. Whitford, Appellants,

vs.

GEORGETTE A. CHAMBERLIN, FRANK T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt.

No. 860.
January Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court, with directions to sustain the demurrer, dissolve the injunction, and dismiss the bill as to the appellants Thomas T. Keane, Alpheus Middleton, The Central National Bank of Washington, Edward O. Whitford, and the partnership of Browning and Middleton, and for further proceedings not inconsistent with the opinion of this court.

Per MR. JUSTICE SHEPARD.

January 12, 1899.

Court of Appeals, District of Columbia, January Term, 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882.

Appeal from the supreme court of the District of Columbia.

Filed March 6, 1899.

31 Court of Appeals of the District of Columbia, January Term, 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882.

Appeal from the supreme court of the District of Columbia.

32 Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL.
} No. 19686. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

33 *The Demurrer of the Central National Bank.*

Filed Sep. 24, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Complainants,
vs.
HORATIO BROWNING, THE CENTRAL National Bank of Washington City, *et al.*, Defendants.

No. 19686. In Equity. Doc. 45.

The demurrer of the defendant The Central National Bank of Washington City to the bill of complaint filed in this cause.

This defendant, by protestation, not confessing all or any of the matters and things in the complainants' bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, demurs to said bill, and for cause of demurrer shows that it appears by the said bill that the same is exhibited against this defendant and several other persons therein named as defendants thereto for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious, and that the complainants have not in and by their said bill made or stated such a case as entitles them in a court of equity to any discovery from this defendant or to any relief against it as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant demurs thereto and asks the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its reasonable costs.

EDWARDS & BARNARD,
Sol'rs for Def't The Central National Bank of Washington City.

34 We hereby certify that in our opinion the aforegoing demurrer of the defendant The Central National Bank of Washington City to the bill of complaint filed in the above-entitled cause is well founded in law.

EDWARDS & BARNARD,
Solicitors for said Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Clarence F. Norment, being first duly sworn, on oath state that I am the president of The Central National Bank of Washington City, the above-named defendant; that I have read the aforegoing demurrer to the bill of complaint in the above-entitled cause, and that the same is not interposed for delay.

CLARENCE F. NORMENT.

Subscribed and sworn to before me this twenty-third day of September, A. D. 1898.

[SEAL.] GUY H. JOHNSON,
Notary Public, D. C.

Demurrer of Horatio Browning and Alpheus Middleton.

Filed Sep. 26, 1898.

In the Supreme Court of the District of Columbia.

CHAMBERLIN ET AL. *vs.* BROWNING ET AL. } In Equity. No. 19686.

Now comes the defendants Horatio Browning and Alpheus Middleton, partners, doing business under the firm name of Browning and Middleton, and Horatio Browning, in his own right and as assignee, and by protestation, and not confessing any of the facts alleged in the bill of complaint to be true as charged, demur to the said bill, and say that the complainants therein have not in
35 and by their said bill stated such a case as entitles them to any relief in a court of equity or to any standing in this cause for the alleged purposes of said bill, in that:

1st. Said bill is multifarious.

2nd. That the complainants show no such interest in the property involved as entitles them to file this bill and seek the relief prayed.

3d. Because the court has no jurisdiction to proceed as prayed.

4th. Because of complainants' laches apparent upon said bill, and—

5th. For numerous other reasons apparent upon the face of said bill.

And the said defendants pray that the said bill may be dismissed with costs to them.

ARTHUR PETER,
Solicitor for Def'ts Browning and Middleton.

CITY OF WASHINGTON, *District of Columbia,* } *To wit:*

Horatio Browning and Alpheus Middleton, being duly sworn, on oath say that the annexed demurrer is not interposed for delay.

HORATIO BROWNING.
ALPHEUS MIDDLETON.

Subscribed and sworn to before me this 26th day of ——, —.

J. R. YOUNG, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

I hereby certify that in my opinion the aforegoing and annexed demurrer is well founded in point of law.

ARTHUR PETER,
Solicitor for Def'ts Browning and Middleton.

36 *Memorandum.*

January 30, 1899.—Mandate of Court of Appeals reversing decree.

Decree.

Filed Jan. 31, 1899.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL. } In Equity. No. 19686.

Upon consideration of the mandate of the Court of Appeals filed herein and in obedience thereto, it is this 31st day of January, 1899, ordered, adjudged, and decreed that the demurrers of the defendants Thomas T. Keane, The Central National Bank of Washington, Edward O. Whitford, and of Alpheus Middleton and Horatio Browning, as partners, doing business as Browning and Middleton, be, and the same are hereby, sustained, the injunction against said defendants is hereby dissolved, and the bill of complaint as against them is dismissed. It is further ordered and decreed that the complainants pay the costs of said several defendants, to be taxed by the clerk, and said defendants may have execution therefor as at law.

It is further ordered that this cause be, and the same is hereby, referred to the auditor to determine and report the damages of said several defendants sustained by reason of the said injunction and which should be awarded them against the complainants and their sureties under their undertaking given upon the granting of said injunction, this cause being retained as against said several named defendants only for the purpose of sustaining and awarding such damages as they have sustained, if any.

W. S. COX, *J.*

37 *Order Granting Appeal from Decree.*

Filed Feb. 11, 1899.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiff-,
vs.
HORATIO BROWNING ET AL., Defendants. } In Equity. No. 19686.

On motion of the plaintiffs, by O. B. Hallam, their solicitor, an appeal is granted them to the Court of Appeals from the decree rendered herein on January 31, 1899, and the penalty of an appeal bond, to cover costs, but not to act as a supersedeas, is fixed at fifty

dollars ($50) or a deposit of that amount may be made in lieu of bond.

This 11th day of February, 1899.

W. S. COX, *J.*

38 In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL. } No. 19686. In Equity.

The President of the United States to Horatio Browning & Alpheus Middleton, trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 11th day of February, 1899, wherein Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, trading as Kelley & Chamberlin, and William Galt are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 15 day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal Sup. Ct. D. C.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 15 day of February, 1899.

A. A. BIRNEY,
Attorney for Appellee Keane.
EDWARDS & BARNARD,
Att'ys for Central Nat'l Bank.
ARTHUR PETER,
Att'y for Whitford and Browning & Middleton.

[Endorsed:] No. 19686. Equity. Georgette A. Chamberlin *et al.* *vs.* Horatio Browning *et al.* Citation. Issued Feb'ry 15, 1899. O. B. Hallam, attorney for appellant-.

39 *Memorandum.*

February 20, 1899.—Appeal bond filed.

Stipulation as to Record.

Filed Feb. 24, 1899.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs,
vs.
HORATIO BROWNING ET AL., Defendants. } No. 19686. In Equity.

It is stipulated and agreed between the plaintiffs and the defendants Keane, Browning and Middleton, The Central National Bank of Washington, and Whitford that the record on the appeal shall consist of the record in the Court of Appeals in case No. 860, Keane *vs.* Chamberlin *et al.*, the demurrer of the Central National Bank filed September 24, the demurrers of Browning, Middleton, and Whitford filed September 26, and the proceedings in this court subsequent to the filing of the mandate of the Court of Appeals, including this stipulation, and that the printing of the record in the Court of Appeals is waived upon the filing of an assignment of errors.

O. B. HALLAM,
Attorney for Plaintiffs.
ARTHUR PETER,
Att'y for Keane, Browning & Middleton, and Whitford.
EDWARDS & BARNARD,
For Central National Bank of Washington City.

40 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the above and foregoing pages, numbered from 1 to 8, inclusive, contain a true and correct transcript of the record and proceedings had in said court, as per stipulation of counsel filed February 24, 1899, in cause No. 19686, in equity, wherein Georgette A. Chamberlin *et al.* are complainants and Horatio Browning *et al.* are defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I hereunto subscribe my name and [SEAL.] affix the seal of said court, at the city of Washington, in said District, this 6th day of March, A. D. 1899.

JOHN R. YOUNG, *Clerk.*

41 [Endorsed:] District of Columbia supreme court. No. 882. Georgette A. Chamberlin *et al.*, appellants, *vs.* Horatio Browning *et al.* Court of Appeals, District of Columbia. Filed Mar. 6, 1899. Robert Willett, clerk.

42 In the Court of Appeals of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,
vs.
HORATIO BROWNING ET AL., Appellees. } No. 882.

And now comes the appellants and assign the following errors:
1. The court erred in sustaining the demurrers of the appellees.
2. The court erred in dissolving the injunction.
3. The court erred in dismissing the bill as to appellees.
4. The court erred in referring the cause to the auditor to inquire as to damages.

O. B. HALLAM,
Attorney for Appellants.

(Endorsed:) No. 882. Georgette A. Chamberlin *et al. vs.* Horatio Browning *et al.* Assignment of errors. Court of Appeals, District of Columbia. Filed Mar. 10, 1899. Robert Willett, clerk.

43 In the Court of Appeals of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,
vs.
HORATIO BROWNING ET AL., Appellees. } No. 882.

And now come the appellants and, having filed their assignment of errors, move the court that the printing of the record in this cause be dispensed with, as per stipulation to that effect contained in the record.

O. B. HALLAM,
Attorney for Appellants.

(Endorsed:) No. 882. Georgette A. Chamberlin *et al. vs.* Horatio Browning *et al.* Motion to dispense with printing of record. Court of Appeals, District of Columbia. Filed Mar. 10, 1899. Robert Willett, clerk.

44 FRIDAY, *March 10th, A. D.* 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford. } No. 882.

On motion of Mr. O. B. Hallam, of counsel for the appellants, it is ordered by the court that the printing of the record in the above-

entitled cause be dispensed with. Whereupon this cause was submitted to the consideration of the court on the transcript of record filed herein.

45 GEORGETTE A. CHAMBERLIN ET AL., Appellants,
vs.
HORATIO BROWNING ET AL., Appellees. } No. 882.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

This is the second appeal in this case. The first was a special appeal allowed on behalf of the appellees herein from an interlocutory decree overruling their demurrers to the complainants' bill and refusing to dissolve an injunction.

On January 3, 1899, the decree appealed from was reversed and the cause remanded with direction to sustain the demurrers, dissolve the injunction, and dismiss the bill as to the appellants named therein. Keane *v.* Chamberlin, 27 W. L. R., 98. Upon the receipt of the mandate the court below on January 31, 1899, entered a final decree in accordance with the opinion of this court, dissolving the injunction and dismissing the bill as to the appellees herein and awarding costs, for which execution was ordered to issue. An order of reference was then made to the auditor to determine and report the damages of the defendants sustained by reason of the injunction, the cause being retained as against the said parties and their sureties only for the purpose of ascertaining and awarding such damages as may have been sustained.

From that decree this appeal has been prosecuted. A stipulation was filed agreeing that the record on this appeal shall consist of the record of the former appeal in this court, together with certain papers filed in the cause after its return to the court below and the final decree aforesaid. It was also agreed that the printing of the record in this court should be waived upon the filing of an assignment of errors.

The appellees concede that the decree is final and agree to the motion of the appellants that the cause be submitted upon the record, as stipulated, without printing the same.

As no new question has been presented and the object of the motion and agreement thereto is to obtain a speedy appeal to
46 the Supreme Court of the United States for the purpose of reviewing the decision of this court made on the former appeal and with as little additional cost as may be practicable, the motion to submit the cause upon the record aforesaid is granted.

For the reasons given in the opinion on the former appeal the decree appealed from is affirmed with costs.

Affirmed.

SETH SHEPARD,
Associate Justice.

47 TUESDAY, *March 14th, A. D.* 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS Middleton, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882. January Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

March 14, 1899.

48 WEDNESDAY, *March 15th, A. D.* 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882.

On motion of Mr. O. B. Hallam, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of three hundred dollars.

49 Know all men by these presents that we, Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Lansburgh & Bro., Kelley & Chamberlin, and William Galt, as principals, and John W. Ross, as surety, are held and firmly bound unto Browning & Middleton, the Central National Bank of Washington City, Thomas T. Keane, and Edward O. Whitford in the full and just sum of three hundred dollars ($300.00), to be paid to the said Browning & Middleton, The Central National Bank of Washington City, Thomas T. Keane, and Edward O. Whitford, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Georgette A. Chamberlin and the other obligors, as appellants, and the said Browning and Middleton and the other obligees, as appellees, a decree was rendered against the said appellants, and the said appellants having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Lansburgh & Bro., Kelley & Chamberlin, & William Galt shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGETTE A. CHAMBERLIN. [SEAL.]
F. T. CHAMBERLIN. [SEAL.]
HENRY M. DEXTER. [SEAL.]
THE CAPITAL TRUST CO.,
WASH. B. WILLIAMS,
LANSBURGH & BRO.,
KELLEY & CHAMBERLIN, AND
WM. GALT,
By O. B. HALLAM, *Att'y.* [SEAL.]
JOHN W. ROSS. [SEAL.]

Sealed and delivered in the presence of—
W. M. HALLAM.

Approved by—
R. H. ALVEY, *Ch. Justice.*

[Endorsed:] No. 882. Georgette A. Chamberlin *et al.*, appellants, *vs.* Horatio Browning *et al.* Bond on appeal to Supreme Court U. S.

Court of Appeals, District of Columbia. Filed Mar. 21, 1899. Robert Willett, clerk.

50 UNITED STATES OF AMERICA, *ss:*

To Horatio Browning & Alpheus Middleton, trading as Browning & Middleton; Thomas T. Keane, the Central National Bank of Washington, and Edmund O. Whitford, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, trading as Kelley & Chamberlin, and William Galt are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 21st day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 21st M'ch, 1899.

A. A. BIRNEY,
For Browning & Middleton, T. T. Keane, and E. O. Whitford.
EDWARDS & BARNARD,
For Central Nat'l Bank of Washington City.

[Endorsed:] Court of Appeals, District of Columbia. Filed Mar. 21, 1899. Robert Willett, clerk.

51 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 50, inclusive, contain a true copy of the transcript of the record and proceedings of said Court of Appeals in the cases of Thomas T. Keane *et al.*, appellants, *vs.* Georgette A. Chamberlin *et al.*, and Georgette A. Chamberlin *et al.*, appellants, *vs.* Thomas T. Keane *et al.*, being Nos. 860 & 882, January term, 1899, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 31st day of March, A. D. 1899.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 17,351. District of Columbia Court of Appeals. Term No., 251. Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, *et al.*, appellants, *vs.* Horatio Browning and Alpheus Middleton, trading as Browning & Middleton; Thomas T. Keane, *et al.* Filed April 4th, 1899.

Office Supreme Court U.S.
FILED
APR 10 1900
JAMES H. McKENNEY,
Clerk.

No. 251.

Brf. of Hallam for Appts.

Filed April 10, 1900.

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,

vs.

HORATIO BROWNING ET AL., Appellees.

APPEAL FROM THE COURT OF APPEALS
OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

O. B. HALLAM,
Attorney for Appellants.

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,

vs.

HORATIO BROWNING ET AL., Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

STATEMENT OF CASE.

On the 25th day of August, 1898, the appellants filed their bill in equity against the appellees and others, in the supreme court of the District of Columbia, setting forth that all the parties are residents of the District of Columbia, and that on the 24th day of April, 1896, John B. Scott, one of the defendants, executed a certain deed of assignment to Horatio Browning, one of the appellees; this deed is copied into the record (p. 12), and is made in conformity with "An act relative to voluntary assignments in the District of Columbia," approved February 24, 1893, 24

Stat. L., 474, and was signed and acknowledged by Browning as well as Scott on the day of its date. The schedules required by the act are annexed, with the statutory affidavit of the correctness and completeness of the assets and liabilities; and all the parties to this appeal are named in the list of creditors. The description in the granting clause is—

> "all and singular the *real estate*, goods, chattels, merchandise, effects, stocks, promissory notes, debts, claims, demands *and property* of him the said party of the first part (except all legal exemptions which are hereby reserved by said party of the first part), the same being fully described in Schedule 'A' hereto annexed."

One of the items in the schedule, the only one material to the present appeal, is—

> "estate for life of said party of the first part in twenty-five acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A. No. 11, folio 241, *et seq.*, of the land records of said county."

This deed was from John D. Coughlan to Scott, conveying, as will be seen later on, not only a life estate but certain other powers and interests amounting practically to a fee simple.

The bill then goes on to show that all the appellees had actual as well as constructive notice of the deed of assignment, elected to accept its provisions, attended creditors' meetings called by the assignee, voted as to the disposition of the estate, and accepted dividends paid by the assignee from the proceeds; but afterwards, in violation of the rights of the appellants and other creditors, went to Montgomery county and levied attachments on the 25 acres of land as Scott's property,

procured *ex parte* judgments of condemnation, and had issued on the judgment of Keane, one of the appellees, a writ of *fieri facias*, and were about to sell the land thereunder. That in order to effectuate their attachment liens Keane had, in the interest of all the attaching creditors, by bill in equity in the Maryland court, had the title in Scott declared to be a fee simple. In addition to charging gross breach of trust by Browning, in attempting thus to use to his own advantage property he held in a fiduciary capacity, the bill alleged that he had never made any accounting, and prayed for him to render an account of such assets as he had administered, for his removal and the appointment of a new trustee, etc.; and that the appellees be restrained, pending the action, from in any manner proceeding to enforce their said attachments or judgments, and from doing any act or thing to hinder, delay or interfere with the control or management of the estate abroad for the equal benefit of all said Scott's creditors, and from in any way seeking to secure to themselves any greater benefit or interest out of said estate and effects than shall represent their *pro rata* share under said assignment; *or, in the alternative*, if this could not be done, that the attaching creditors be directed to bring into court any moneys realized from said land, and that the same be treated as assets passing by said deed of assignment, and distributed among the creditors as therein directed.

On the filing of this bill, a restraining order was at once granted as prayed; on the next day the appellee, Keane, filed his affidavit denying certain allegations of the bill, and a motion to discharge the restraining order as to him; which the court refused to do, but so far modified it as to direct that it should—

"not interfere with his (Keane's) right to allow the sale advertised under his writ of *fieri facias* to proceed."

The appellees filed separate demurrers to this bill claiming: 1. That the bill is multifarious; 2. Complainants show no interest; 3 Want of jurisdiction; 4. Complainants' laches.

On hearing of these demurrers they were overruled November 1, leave given to answer, and the temporary injunction, as modified by the order of Aug. 26, continued until final hearing.

It may be mentioned here that in addition to reliance on the statute of 1893, *supra*, as passing all property, whether described or not, the appellants alleged (record p. 5), that it was the intention of Scott, well known to Browning, to convey all his property, and the use of the term "estate for life," in reference to the Maryland land was an attempt to describe all his interest; and had he known the courts would hold the limitations in the Coughlan deed constructively fraudulent and that he really had a fee simple, he would have so listed it in his schedule; and also prayed that Scott be required, if need be, to execute to the new trustee a deed conveying the fee simple; also that the theory upon which appellees undertook to appropriate the land was that the deed was void, for failure of the assignee to give a bond required by a Maryland statute; a defect which the appellants insist cannot avail appellees, because they are estopped both by their residence and their acceptance of the deed.

A special appeal was granted the appellees from this decree of November 1, and on January 12, 1899, the court of appeals reversed same on two grounds stated in the opinion—1. That under the Maryland law no

title to this land passed because of the failure of the assignee to give bond as required by a Maryland statute hereinafter mentioned. 2. That the Maryland judgments of condemnation, were final and conclusive against all the world. The mandate directed the sustaining of the demurrer, dissolving of the injunction and dismissal of the bill as to all the present appellees; but allowed the case to proceed as to the matter of accounting, etc.

On January 31, in conformity with this mandate, the supreme court of the District entered a decree sustaining the demurrer, dissolving the injunction and dismissing the bill as to the present appellees, awarding costs and referring the cause to the auditor to ascertain the damages sustained by the injunction. An appeal was then taken by the present appellants, and on March 14 the decree of January 31, was affirmed by the court of appeals; and from this the present appeal is taken.

ASSIGNMENT OF ERRORS.

The appellants assign the following errors in the proceedings, as grounds for reversal—grouping them in order of time.

1. The order of August 26, 1898, modifying the restraining order. (p. 9.)

2. The decree of the court of appeals of January 12, 1899, reversing the decree of the lower court. (p. 32.)

3. The ruling by said court that the deed did not pass the title to the Maryland land. (p. 28.)

4. The ruling by said court that the judgment of condemnation was binding on the appellants. (pp. 28-29.)

5. The decree of the supreme court of the District; (*a*) sustaining demurrer; (*b*) dissolving injunction; (*c*) dismissing bill; (*d*) awarding costs; (*e*) directing auditor to ascertain damages.

6. The decree of the court of appeals, March 14, 1899, affirming said decree.

AS TO JURISDICTION OF THIS COURT.

Being informed that the question will be raised that this court is without jurisdiction because the amount in controversy does not exceed $5,000, I call the court's attention to the fact that the object is to save for the estate land worth $15,000. (p. 5.)

> "In a suit for property, plaintiff's averment of value determines the amount in controversy".
>
> Bennett *vs.* Butterworth, 8 How. 124.

That the appellants act in lieu of the appointed assignee, whose actions and interest conflict with theirs; that while the individual claim of each of the appellees is less than $5,000 it is alleged that they were acting jointly. (p. 6.)

Besides this it is evident that any proceeding to enjoin one attaching creditor would not operate to relieve the sale of the land under a judgment of any one or more of the others; hence this case must be treated as one to save from sequestration or alienation by sheriff's sale $15,000 worth of property. It may be added, also, that the claim of one of the appellants, Mrs. Chamberlin, is stated at over $25,000 (p. 5);

hence in any view of the case there is more than $5,000 involved and the jurisdiction of this court is clear.

> "The value of the specific property which is in litigation must determine the jurisdiction. The value of a trust estate which is involved is the value of the matter which is in dispute for the purpose of an appeal by the trustee."
>
> Kenaday *vs.* Edwards, 133 U. S. 178.

> "If the determination of a cause necessarily involve the validity of title to land of more than $5,000 in value, and several plaintiffs claim under it; although the claim of no one exceeds that sum, the amount is within the jurisdiction of the Supreme Court."
>
> New Orleans P. R. Co. *vs.* Parker, 143 U. S. 42.

> "When a bill by a preferred creditor for the amount more than $5,000 under an assignment to enjoin a sale of the property by attaching creditors and to establish the assignment with its preferences is dismissed, the distribution of the assigned property among these claiming under the assignment not being in question, an appeal may be had if the property involved in the assignment exceeds $5,000 in value, although the amount of the claims of the attaching creditors is less than that sum."
>
> Estes *vs.* Gunter, 121 U. S. 183.
> S. C. 122 U. S. 450.

Attention is also called to the following cases of the same general tenor.

Gibson *vs.* Shufeldt, 122 U. S. 464.
Metcalf *vs.* The Alaska, 130 U. S. 201.
Stuart *vs.* Boulware, 133 U. S. 78.

Lovell *vs.* Cragin, 136 U. S. 150.
Brown *vs.* Trousdale, 138 U. S. 389.
Clay *vs.* Field, 138 U. S. 464.

It seems hardly necessary to discuss the question of multifariousness, in view of the fact that both the lower courts have passed it by, and the holding by this court in Gaines vs. Chew, 2 How. 619; Oliver vs. Pratt, 3 How. 411, and Graves vs. Chew, 152 U. S. 571, that it must be left to the discretion of the court—but it may be mentioned that there is sufficient authority, not only from these cases, but from—

Adams Equity, pp. 309-10.
Dunn *vs.* Cooper, 3 Md. Ch. 76.
Storys Eq. Pleading, § 521 (note *a*), § 286*a* and § 852.
Mills *vs.* Hind, 32 Fed. Rep. 127,

to hold that a bill of this character is not multifarious.

ARGUMENT.

While the assignments of error are six in number, the main argument may be divided into two heads, relating respectively to assignments Nos. 3 and 4, the others being incidentally embraced.

THE LAND PASSED BY THE ASSIGNMENT.

The second ground of the demurrers is founded on the hypothesis that the Maryland land did not pass by the assignment, at least not in such way as would enable

the appellants to reach it. To ascertain the exact status of this land let us consider its history as stated in the bill. Scott owned it in fee simple on October 17, 1888, and conveyed it to Coughlan, who immediately conveyed it back to Scott, his heirs and assigns, to the use of the said Scott, his heirs and assigns upon the following trusts.

> "In trust for the said John B. Scott during his life to retain possession of said parcel of land and premises without impeachment for waste, and receive the rents, issues and profits thereof for his own use and benefit, and from and after his death to hold said parcel of land and premises, unless the same shall be disposed of as hereinafter authorized, for the use and benefit of Mary Elizabeth Scott and Margaret Adelia Scott, daughters of said John B. Scott, their heirs and assigns forever, as tenants in common, and upon this further trust, that said John B. Scott shall have full power and authority to lease or sell said parcel of land, or any part thereof, from time to time, and convey the same in fee simple, absolute or by way of mortgage, deed of trust or otherwise, and upon such terms and for such conditions as said John B. Scott may deem fit, and without obligation on the part of the purchaser to see to the application of the purchase money, or the person lending money to see to the application thereof, and to devise and to dispose of said parcel of land and premises by last will and testament executed according to law."

We insist that these two deeds left the title to the property just where it was before they were made; that their only effect was to muddy the waters—or the land; and that a deed with such remarkable powers to use, mortgage, sell or devise, without responsibility to

anybody, gave Scott a fee simple title as much as though no pretended trust had been added. A deed with similar qualifications was recently held by the highest court of Virginia, in Walke *vs.* Moore, 30 S. E. Rep., 374, to convey a fee simple title. Moreover, the appellee Keane, acting, as alleged, for himself and his colleagues, in his bill in equity in the Maryland court alleged that "Scott was intended to become and was the fee simple owner" (p. 4,) and the court concurred with him.

But it is immaterial whether this be so or not. All property which Scott had, passed by his deed of assignment, and these powers and this control and right to convey it amounted, by their peculiar phraseology, to a property beyond a life estate. The word "property" is so generic as to comprehend all that a man can do with it. Thus in Kuhn *vs.* Common Council, 70 Mich. 137, it was held that a statute forbidding the acceptance of a brewer on a liquor dealer's bond was unconstitutional, as depriving him of the right to pledge his property—it being regarded the same as the property itself; and in Shuman *vs.* Elder, 24 N. Y., 381, it was held that an assignment of all property included the right to bring an action for unliquidated damages for failure to deliver some property.

It is immaterial from another point of view also; conceding appellees' contention that the deeds were not void but only voidable, it by no means follows that none but a judgment creditor could attack them.

Under the ancient rule of the common law an assignee could not attack a fraudulent conveyance made by the debtor, and it may be admitted that hence no creditor claiming only under the deed could do so; but the reason of that rule was that because the debtor him-

self could not attack his own fraud, and because the assignee took only such rights as the debtor had—stepped into his shoes so to speak—neither could he attack it.

Take away the prop and you take away the house, take away the means of living and you take away the life, we know, not only by human experience but also on the authority of Shylock. The law has paraphrased this into a maxim—*Ratio legis cessante cessat lex*—; take away the reason for the rule and the rule falls. There is no reason in the present instance why the assignee or, in the event of his failure, a successor or a creditor in his stead, could not attack these conveyances; Scott was under no inhibition from moving against them; on the contrary, living or dying, he could wipe them out with one stroke of the pen.

Moreover the tendency of modern decisions has been to considerably modify that ancient rule, at least whenever the state has undertaken by statute to regulate the making of assignments and their effect; and this without one word in the statute expressly conferring power to sue to set aside fraudulent conveyances.

The leading case on this point is Pillsbury vs. Kinyon, 33 N. J. Eq. 287, decided by the Court of Errors and Appeals, wherein it is held that:

> "1. An assignee under an assignment for the benefit of the creditors of the assignor, may file a bill to set aside a prior conveyance of lands made by the assignor for the purpose of defrauding his creditors, if the property so conveyed is required for the payment of the claims of creditors."
>
> "2. Assignees under the assignment act and executors and administrators of insolvent estates are the representatives of creditors, andas such,

may, for the benefit of creditors set aside conveyances by the assignor or the decedent in fraud of creditors, to the extent that such property is needed for the payment of debts."

The following are extracts from the opinion:

"Though one who parts with his property for the purpose of defrauding his creditors cannot recover it back, his personal representatives may sue for it for the benefit of his creditors, if his estate be insufficient to pay his debts."

Citing:

Stewart vs. Kearney, 6 Watts, 453.
Buehler vs. Gloninger, 2 Ib. 226.
Bouslough vs. Bouslough, 68 Pa. St., 495.
Everett vs. Read, 3 N. H., 55.
Abbott vs. Tenney, 18 Ib., 109.
Cross vs. Brown, 51 Ib., 486.
Fletcher vs. Holmes, 40 Me., 364.
McLean vs. Weeks, 61 Ib. 277; s. c., 65 Ib. 411.

Also that under acts of 1 Geo. IV, c 119, and 7 Geo. IV, c 57., in Butcher vs Harrison, 4 B. and Ad. 129, assignees were held to be persons aggrieved within the meaning of 13 Eliz., c 5, (the present local law of the District of Columbia).

"In Doe, Grimsby vs Ball, 1 M. and W., 531, the assignee was adjudged capable of recovering lands fraudulently conveyed. Parke, B. said: 'I think that the assignee of an insolvent debtor represents the creditors for all purposes, and if any fraud exists in a transaction to which the insolvent was a party, that the assignee may take advantage of it; a deed which is void as against creditors is void also

as against those who represent creditors.' Alderson, B., also said: 'If a deed be void as against creditors, the assignee who represents creditors may avoid it'.

"In Holmes vs. Penney, 3 K and J, 90, Vice Chancellor Wood said: 'I have no doubt of the right of the assignee in insolvency to sue in this case' referring back to Grimsby vs. Ball.

"In none of these cases was the decision placed on any language in the statute specially empowering the assignee to avoid the fraudulent conveyances of the assignor. In fact neither of those statutes contained any express provision for setting aside conveyances in fraud of creditors, and that fact was unsucessfully, pressed upon the attention of the court by counsel, who argued against the authority of the assignee to execute that power.

"A trustee or assignee in insolvency has been considered as the representative of the creditors of the debtor and as such entitled to avoid, in the interest of creditors, his grants and conveyances made in fraud of creditors."

Citing:

Swift vs. Thompson, 9 Conn. 63.
Palmer vs. Thayer, 28 Ib. 237.
Shipman vs. Etna Ins. Co., 29 Ib., 245.
Moncure vs. Harrison, 15 Pa. St. 385.

The New Jersey Court also cites with approval, Moore vs. Bonnell, 2 Vr., 90, as follows:

"It is difficult to perceive how an assignment voluntarily made by a debtor for the benefit of his creditors, differs in substance from one executed under the compulsion of an insolvent or bankrupt law. There is scarcely a shade of difference between the coercion of circumstances impelling a failing debtor to wind up

> his affairs, and that liquidation brought about by a creditor taking the initiative and proceeding against him."

This opinion is approved by the New Jersey court of chancery in Grant vs. Crowell, 9 Atl. Rep. 201; and in Kalmus vs. Ballin, 28 Atl. Rep. 791, another New Jersey case, carrying out the same doctrine still further, it is held that the assignee having the power, he owes a duty to certain creditors to make such attack, and on failure to perform such duty, *a creditor to whom it is due may file a bill in his own name to avoid such transfer.*

New Jersey is not alone in this view—several other states join the procession.

Thus in Hanes vs. Tiffany, 25 Ohio St., 552, it is said:

> "It is contended that as the mortgage is good against the mortgagor it is also good against the assignee for the benefit of creditors; that the latter stands in no better position than the assignor. The correctness of this position at common law is admitted; but not so under the statute. The statute declares the mortgage void as against the creditors of the mortgagor. The assignee took the property under the assignment and held it for the exclusive benefit of creditors. The mode of providing for creditors by way of assignment in trust for their benefit is recognized and regulated by statute; and we see no good reason why their rights may not be as effectually asserted through the assignee as they could be by judgment and execution in case there had been no assignment."

And in Blandy vs. Benedict, 42 Ohio St., 299.

> "By the assignment the rights of creditors

passed to the assignee as matter of law. The right of creditors to seize the property in the hands of the assignee did not exist, but the assignee was bound in law to administer the trust for their benefit. Every right which the creditors might have asserted against the property before the assignment, the assignee is bound to secure for their benefit after the assignment."

And in Chapin vs. Jenkins, 50 Kan , 385, we find:

"The assignee is the representative of all the creditors, and for their benefit may contest the validity of the fraudulent mortgage;" and on page 394: "The ruling of the lower court that the mortgage being good between the parties it was also good as to the assignee and creditors he represents, and that the assignee could not show fraud in the mortgage is deemed to be erroneous and therefore there must be a reversal."

"The assignee for benefit of creditors may recover property fraudulently conveyed, as he may reach funds in the hands of a fraudulent holder."

Cooper vs. Perdue, 16 N. E. Rep., 141.

"Not only the property omitted from the schedule is transferred to the creditors, but the syndic as their rep esentative, may sue to annul the transfer of any property which the debtor has mad- to their prejudice prior to the cession."

Chaffee vs. Scheen, 34 La. Ann. 686.

It seems clear that the assignee, Browning, had the right to attack these conveyances if it was at all necessary, and that it follows that any creditor might do the same on his failure. Hence that the appellants have

the right by proper proceedings to get at the fee simple, if it is hidden, unless their right to do so is obstructed or destroyed from some other cause.

Whether the Assignment Passed the Title.

This involves two questions; whether it was executed so as to pass title under the District law; and if yea, whether the Maryland statute requiring a bond prevents its going into effect as between the parties to this bill. It is conceded that the execution and acknowledgment was sufficient under the Maryland law.

That the first of these questions must be answered in the affirmative admits of no reasonable doubt. The language of the act of February 24, 1893, is "Such inventory shall not be conclusive as to the amount of the debtor's estate, but such assignment shall vest in the assignee**the title to any other property**belonging to the debtor**at the time of making the assignment and comprehended within the general terms of the same;" another section forbids preferences and provides for the payment of all debts *pro rata*. The declared purpose of the act is thus to forbid partial assignments and to secure an equal distribution of the whole estate.

The validity of such declaratory acts has been repeatedly recognized and the deeds given full effect to convey omitted or misdescribed property.

Falk vs. Liebus, (Colo.) 42 Pac. Rep., 46.
Smith vs. Goodman, (Ill.) 36 N. E. Rep., 621.
Walton vs. Eby, (Kan.) 36 Pac. Rep., 332.
Farwell vs. Gundry, 52 Wis., 268.
Bank of Tennessee vs. Horn, 10 How., 157.
Geilinger vs. Phillippi, 133 U. S., 246.

The last case is almost on all fours with the present one. It came from Louisiana, where the law provided that all property of the debtor should pass by the *cessio bonorum*,—equivalent to our deed of assignment. One Green had made a *cessio* and, in his schedule, not only omitted a certain piece of property but declared in the paper that he did not own it, that it belonged to his wife. Yet both the Louisiana circuit court and this court held that it passed nevertheless, and require certain creditors who had obtained judgment and levied executions to surrender the property to the assignee and take only their distributive share with the rest of the creditors.

The following paragraphs are quoted from the syllabus, which follow almost the exact language used by Chief Justice Fuller in his opinion:

> "By the laws of Louisiana, when a *cessio bonorum* has been accepted by the court and the creditors, and a syndic has been appointed and qualified, all the property and rights of property of the insolvent are vested in his creditors, represented by the syndic as their trustee, and pass to the creditors by the cession, whether included in his schedule or not.
>
> "This rule relates to possession and disposition, and the surrender of the insolvent does not devest him of the title to the property surrendered, though it strips him of the power to control alienate or dispose of the same, during the administration of his estate.
>
> "If property be omitted by mistake or with fraudulent intention, it is the duty of the syndic to have the schedule amended so as to include it, *and it is the duty of the creditors to bring it to his attention that he may do so.*
>
> "Evidence offered that the insolvent did not intend to include such property, because advised

> by counsel that it was not liable for his debts, was properly excluded, as his intention could not control the operation of the law or defeat the rights of his creditors."

A similar ruling was made in Bank of Tennessee vs. Horn, *supra*, where certain property was imperfectly described and creditors seized it; and Chief Justice Taney, in delivering the opinion, said it was immaterial whether the description was sufficient to identify the property, that it passed anyhow by the cession, and the syndic's title was superior to that of a purchaser at the creditors' sale.

Of the same general tenor also are Brashear vs. West, 7 Peters, 614, and Burrill on Assignments, § 99.

Were there no Maryland statute relating to assignments, it is clear that the deed passed all of Scott's property to the assignee. But it is contended that although the deed was in proper form, and although the creditors knew of its execution, and although it was duly recorded before all but two of the attachments had been levied, yet it was not good against any creditor who saw fit to disregard it, because Article 16, § 205, of the Maryland code declares that no title shall pass to the trustee until a certain bond is filed—which Browning never caused to be done; and a number of Maryland decisions are cited, upholding this provision. It will be noticed, however, that none of these are cases in which an assignment executed out of the state, at the debtor's domicile, has been sought to be avoided by a creditor also of the same domicile.

In Williams vs. Kemper, 43 Pac. Rep. 1148, decided in Oklahoma in 1896, an opinion was delivered exhaustively reviewing the decisions on the effect of foreign assignments on domestic real estate, and it was held that—

"A deed of assignment made and executed in the Indian Territory according to the laws of that territory, and conveying real estate in Oklahoma is sufficient as a deed of conveyance in Oklahoma if it conforms to all the statutory requirements of Oklahoma as to its recitals, execution and acknowledgment, and has been duly filed for record in the office of the register of deeds in the county where the land is situated. The assignment laws of Oklahoma, only having been intended to embrace assignments made within the territory, have no application to assignments made in the Indian Territory, and an assignee or trustee under an assignment made there is not required to comply with Oklahoma statutes as to filing schedule giving bond, etc., in Oklahoma. (p. 1151, from opinion).

"The referee and the trial court held that the deed of assignment was not operative here, because the assignee had failed to comply with the laws of Oklahoma, in giving bond, filing schedule, etc. He was under no obligation to comply with our assignment laws. If the deed of assignment was sufficient under our laws to convey property, and was recorded as deeds are required to be recorded, the assignee took the title of the assignors.

The court cites Barnett vs. Kinney, 147 U. S. 476, and quotes from opinion therein.

"While the statute of Idaho prescribed pro rata distribution without preference in assignments under the statute, it did not otherwise deal with the dispositions of property by a debtor or prohibit preferences between nonresident debtors and creditors through an assignment made valid by the laws of the debtor's domicile. No just rule required the courts of Idaho at the instance of a citizen of another state to adjudge a transfer valid at common law, and by the law

> of the place where it was made, to be invalid because preferring creditors elsewhere, and therefore in contravention of the laws of Idaho, and the public policy therein indicated in respect of its own citizens proceeding thereunder."

The court also cites in support of its ruling as to real estate—drawing distinction between voluntary and involuntary assignments.

> Roger vs. Allen, 3 Ohio, 489.
> Sodwell vs. Jewett, 9 Ohio, 181.
> Lamb vs. Fries, 2 Penn., 83.
> Palmer vs. Mason, 42 Mich., 152.
> Pemberton vs. Klein, 43 N. J. Eq., 98.
> Bentley vs. Whittemore, 19 N. J. Eq., 462.
> Merchants Bank vs. Bank U. S., 2 La. Ann., 660.
> Eddy vs. Winchester, 60 N. H., 63.
> Green vs. Cross, 12 Neb. 117.
> Chaffee vs. Bank 71 Me., 514.
> Gardner vs. Bank, 95 Ill., 298.
> Heyer vs. Alexander, 108 Ill. 385.

> "While a receiver appointed in Connecticut had no rights in Maryland as to citizens of Maryland or third states the Connecticut proceeding was binding on all citizens of Connecticut."
>
> Linvell vs. Hadden, 88 Md. 597.

In this case the following authority is cited with approval:

> "A receiver of one state will be recognized and permitted by another to do all that is necessary to take and possess the property there located, provided that to do so will not violate any law or policy of the latter, or embarrass or do injustice to any of its citizens, or to those of a

> third state who have come there to enforce the payment of their claims against the debtor."
>
> Beach on Receivers, § 268.

And even Maryland courts relax the statute; as for instance in Moore vs. Land Title and Trust Co. (Md)., 33 Atl., 641, it was held—

> "It not being necessary to record an assignment by a foreign corporation for the benefit of creditors of Maryland in order that personalty in Maryland may pass thereunder, the fact that it was so recorded did not render it necessary for the trustee to file bond in the latter state."

The validity of an assignment is to be governed by the law of the domicile, at least as to creditors residing there, regardless of the *situs* of the property.

> Schroder vs. Tompkins, 58 Fed. Rep., 672.
> Farwell vs. Gundry, *supra*.
> Woodward vs. Brooks, 3 L. R. A., 702.

Leading article on "Assignments beyond State" 42 Cen. L. J. 71.

> "An assignment for the benefit of creditors made in another state and executed in conformity with the laws of that state will pass the title to the property of the assignor in this state."
>
> Smith's App., 117 Pa. St., 30.
> Bacon vs. Horne, 123 Ib., 452.

The only exception is in favor of a domestic creditor having no actual or constructive notice of the assignment.

> "Where a transfer of property is valid by the

lex loci, whether it be effected by the act of the debtor or by operation of law, no just rule of comity requires the courts of the state where the property happens to be located, to adjudge such transfer to be invalid, at the instance of citizens of other states, simply on the ground that it is incompatible with its laws. For example: A transfer of property located here, made by a citizen of New York which, though inconsistent in substantial respects with the provisions of our law, yet is valid by the law of New York, will be enforced here against everybody but the citizens of this state."

Receiver vs. First Nat. Bk. 34 N. J. Eq. 454.

Bentley vs. Whittemore, 19 Ib. 462.

"Where, at the time of the assignment, both the creditor and assignor are residents of the foreign state where it is made, the creditor may not come into this state and seize property of the assignee in a suit in foreign attachment."

Bacon vs. Horne, *supra*.

Bagby vs. R. R. Co., 86 Pa. St., 291.

In Juilliard & Co., vs. May, 130 Ill., 87, the court held that:

"A voluntary assignment made in another state by a non resident debtor, executed in conformity with our laws in respect to the conveyance of property, but which is inconsistent in substantial respects with our statute relating to assignments, will not be enforced here to the detriment of our citizens; but for all other purposes, if the assignment is valid by the *lex loci*, it will be carried fully into effect.

"Provision of statute prohibiting preferences applies only to assignments made in this state

> and not to those made in other states; and a non-resident may execute a voluntary assignment with or without preferences, as he may see fit, as long as creditors in this state are not injuriously affected thereby."

And in Long vs. Girdwood, 150 Pa. St., 413:

> "A resident of a foreign state cannot, by a writ of foreign attachment in this state, obtain a preference over an assignment or sequestration for the benefit of creditors of the estate of a non-resident. The rule rests on comity between states and the only exception is in favor of our own citizens.
>
> "Failure to record the assignment in this state will not give priority to such foreign attachment, as the act was passed for the protection of domestic creditors alone."

And in Palmer vs. Mason, 42 Mich. 146:

> "The rule that a voluntary assignment by a foreign insolvent debtor will be postponed to the rights of an attaching home creditor does not apply to real property.
>
> "An assignment for the benefit of creditors is not avoided by a subsequent attachment levied before the assignment could be put on record."

It will also be observed that the Maryland statute only says that no *title* shall pass to the trustee until the bond is executed, and that under the ruling of this court, *ante*, in Geilinger vs. Philippi, it is not necessary, to protect the property against seizure, that the title *shall* pass, but only the possession and disposition; that the property cannot be taken by the creditor, where the right to control and administer has passed to the assignee by a trust created, although the *title* remains in the assignor.

This decision is in harmony with the rulings of many states. "The moment an assignment is filed for record in the proper office, the beneficial interest of the creditors is completely vested, whether the assignee accepts the trust or not."

Marks' Appeal, 85 Pa. St., 231.
Weinman's Estate, 164 Ib., 435.

In Frank vs. Heiner, (N. C.) 23 S. E. Rep., 42, it is said:

"While it is necessary that there should be a legal execution of an assignment to a trustee for the benefit of other parties, it must be kept in mind that these other parties, the *cestuis que trustent*, are the real parties in interest; that they are the parties for whose benefit the deed was made, that they are the equitable owners, and courts of equity will not allow them to be deprived of the benefit of their estate because the trustee refused to act. Burrill Assign., (6th Ed.) p. 312, § 240, 241. It is a principle of equity that a trust shall not fail for the want of a trustee; if necessary a court of equity will appoint a trustee to execute the trust. Adams Eq., (7th Ed.) 36. Burrill Ass. *supra*."

And in Sabin vs. Leibenbaum (Ore), 38 Pac. Rep., 434.

"An assignment cannot be set aside and declared void for the failure of an assignee to qualify. In such case the court is authorized, on the application of any person interested, to appoint some person to execute the trust."

"An assignment recorded in the wrong book is valid as to creditors, though it might be avoided by a *bona fide* purchaser."

Watkins vs. Wilhoit, (Cal). 38 Pac. Rep., 53.

"Though Gen. St. Ch. 24, § 10, provides that no deed of trust or mortgage conveying a legal or equitable title shall be valid against creditors until acknowledged and lodged for record, a general assignment for benefit of creditors duly executed and delivered to the assignee vests in him an equitable title though not yet lodged for record; and a creditor then attaching acquired only an equitable right, to which an equity prior in point of time is superior."

First Nat. Bk. vs. Keefer, (Ky). 23 S. W. Rep., 675.

Mich. Pub. Laws, 1879, p. 318, provides that:—

"No such assignment shall be effectual to convey the property of the assignor to the assignee, until such bond shall be executed, filed with and approved by said clerk."

In Fuller vs. Hasbrouck, 46 Mich., 78. *Held*: Failure of assignee to give bond did not render assignment void for all purposes. Creditors were not authorized to make levies; there was a trust created by the assignment; the failure to file such bond created the contingency which entitled the court to interfere with its receiver, on interference of creditors, and administer the trust in equity.

Seibert vs. Milligan, 10 N. E. Rep. Where all assignor's property passes under a deed by virtue of a statutory assignment no subsequent judgment creditor can obtain a lien.

"An assignment for creditors made by a nonresident will pass title to the assignor's personality in Texas, though it is not registered in the state."

Carter Battle Grocer Co. vs. Jackson, 45 S. W. Rep., 615.

In Wright vs. Youtsey, 5 Ohio N. P., 56, the Hamilton County court of common pleas held, in an elaborate opinion, that a deed of assignment executed in Kentucky, operated to convey real estate in Ohio from date of delivery, as against an attaching creditor who levied before it was recorded, drawing a distinction between voluntary and involuntary assignments in favor of the former.

This same case afterwards came before the supreme court of Ohio in Wright vs. Franklin Bank, 51 N. E. Rep., 876, and the court said:

> "The deed of assignment was executed and delivered in the state of Kentucky, where all the parties resided, and conveyed property (real estate) in Hamilton County in this state (Ohio). Such a deed could not be filed with the probate judge and take effect from the time of its delivery to him, as required by Sec. 6333 Rev. St. The deed in this case was in due form and took effect from the time of its delivery to the assignee." Citing Johnson vs. Sharp, 31 Ohio St., 611.

Appellees Estopped to Deny Trust Title.

As we have seen, the bill alleges that, independent of estoppel by reason of domicil, there was active acceptance of the assignment by all the appellees, and they are thereby estopped to deny the sufficiency of the conveyance as to any of the property. Browning was a party to the deed, signed it and accepted the trust. Surely he cannot be heard to say that it became ineffectual and that he had the right to grab for his own use any of the property, because of his own failure to per-

form one of his duties, the giving of the bond. Neither can the firm of Browning & Middleton, of which he was a member; neither can the Central National Bank of which he was director and vice-president, for, as has recently been held by the court of appeals, D. C. in Post Steamboat Co. vs. Loughran, 26 Wash. L. R., 405, a bank is bound by the knowledge and conduct of its officers in matters pertaining to its pecuniary claims.

This leaves only Keane and Whitford's claims to be considered, as independent of any acts of Browning; but the bill alleges as to them, as well as the firm and the bank, that they elected to accept the provisions of the deed, attended creditors' meetings called by the assignee, voted as to the disposition of the estate, and accepted dividends paid by the assignee.

This is not denied by any of them except Keane, who in an affidavit heard on the injunction, says he only attended one creditors' meeting. But it is shown by the affidavits of two witnesses (Record pp. 10 and 11), that he not only attended two meetings, but accepted a fiduciary position for the creditors, membership on a committee to confer with the assignee to consider a time for the sale of the properties, (on which committee two of the appellants also served), united in a report recommending the removal of the assignee and the appointment of a receiver, and voted in creditors' meeting to adopt this report.

In Groves vs. Rice, 148 N. Y., 227, where a creditor, who had accepted a benefit under the assignment, attempted to gain an advantage over other creditors, the court said:

> "By such conduct, I think, the plaintiff estopped himself from thereafter setting up the invalidity of the assignment. Having recog-

> nized the assignment for the purpose of gaining some advantage, he could not in conscience, turn around and assert its invalidity. It is of no consequence, and I do not think we need consider, whether he could or did receive, in fact, the benefi' supposed. It might have been altogether illusory, and yet there was sufficient in his attempt at using the assignee and the funds of the estate for his benefit to estop him in equity from complaining that the assignment was worthless at law."

The effect of this election to take under the assignment is well illustrated by the rule affirmed by this court in Cole vs. Cunningham, *infra*, that state insolvent laws bind both foreign and domestic creditors,

> "if they make themselves parties to proceedings under these insolvent laws by accepting dividends, becoming petitioning creditors, or in some way appearing and assenting to the jurisdiction." Citing 1 Wall, 223 and 4 Wall, 409.

In the recent case of Kendall vs. McClure Coke Co., 182 Pa. St., 1, it was held that the filing of exceptions to an assignee's account was an affirmance of the assignment and an election to take under it, and the creditor was thereby estopped to proceed in other states to attach land, because the deed was not executed according to the laws of those states; and an injunction was granted restraining the creditor from prosecuting his attachment suits, etc., similar to the injunction granted here.

It is a well settled rule that if a creditor does any act which affirms the assignment he cannot afterward dispute the validity of any of its parts. Indeed I do not understand that this proposition is disputed, but the

counsel for appellees advance the remarkable and very attenuated counter proposition, that the estoppel, if there was any, was only as to the life estate, it being all the interest mentioned in the deed. This kind of estoppel would be like the Irishman's reciprocity, all on one side. It only estops them from denying that which they couldn't deny anyhow.

As I understand it estoppel, like "business," defines itself—an estoppel is an estoppel.

Where a creditor, especially one named in the deed as such, does any act to affirm it, he becomes just as much a party to the deed as though he had signed his name to it, and is bound by all its provisions. It has already been demonstrated that the local statute made the deed effective as to all interest that Scott had; the estoppel then goes not only to the letter of the deed but to the construction which the law of the domicile gives it.

Another very narrow distinction sought to be drawn is between voluntary assignments and insolvent acts. As appears from several of the cases *ante*, the courts do not recognize any such distinction. The estoppel is by matter *in pais*, and not by matter of record. There is, unfortunately, in the District of Columbia no statute requiring an assignee to settle his account with the courts; but it does not follow that creditors are at the mercy of other creditors who may seek to take a part of the property in dividends with one hand and clutch the rest with the other. No sound reason can be given why acceptance of a deed shall not be as binding as the recognition of a judicial proceeding. Indeed, as held in Williams vs. Kemper, *supra*, the voluntary conveyance is the more potent.

"The jurisdiction of the court of chancery to

restrain persons within its territorial limits and under its jurisdiction from doing anything abroad, whether the thing forbidden be a conveyance or other act *in pais*, or the institution or prosecution of an action in a foreign court, is well settled. This is grounded, like all other jurisdiction of the court, not upon any pretension to the exercise of judicial rights abroad, but on the circumstance of the person of the party on whom the order is made being within the power of the court. The rule has been often applied by the courts of the domicile against the attempts of its citizens to defeat the operation of its laws to the injury of others. * * * It may grant an injunction to prevent an evasion of the insolvency laws of the state. The exercise of this jurisdiction is not forbidden by the provisions of the constitution that full faith and credit shall be given judicial proceedings of other states." * * *

"The determination of what is a proper case for the interposition of equity would seem to be reposed in the court whose authority is invoked. But it must appear that such proceedings will be vexatious or oppressive or are instituted to obtain some unjust or inequitable advantage."

Beach's Mod. Eq. Jur. § 649.

"A state court of equity may enjoin a citizen of that state from availing himself of attachment proceedings in another state, against a debtor against whom insolvency proceedings have been instituted in the former state, and for whom an assignee has been appointed."

Dehon vs. Foster, 4 Allen, 545; 7 Allen, 57.

"If a domestic creditor goes out of the state to avoid a valid chattel mortgage on railroad rolling stock, which is not effective in the state to which he goes, and institutes attachment

proceedings without making the mortgagee a party, he may be enjoined from continuing them."

Vail vs. Knapp, 49 Barb , 299.

"A voluntary cession of property by a Louisiana debtor including real estate in Mississippi which is perfected by a judge's order before attachment proceedings by a citizen of Louisiana are begun in Mississippi, will be valid in Louisiana to defeat such attachment; and the attaching creditor being within the jurisdiction of the court may be compelled to deliver the proceeds obtained by him from his attachment to the Louisiana syndic."

Hayden vs. Yale, 45 La. Ann. 362.

The authorities show that equity will enjoin suits in other states where there is fraud, oppression, vexation, injustice or unconscientious advantages; and most especially where there is an attempt to evade or defeat the laws of the state where both parties to the suit reside.

Miller vs. Gittings, (Md.) 37 Atl. Rep. 375.

In Kendall vs. McClure Coke Co., *ante*, reported in 27 Atl. Rep., 823, and 182 Pa. St., 1, as we have seen, the court granted an injunction to restrain a Pennsylvania corporation from prosecuting attachments against lands in Georgia and Florida, which were embraced in the assignment in Pennsylvania, but which it was contended was void in those states, because of certain omissions from the deed, of certain features essential to make it a valid assignment there. This case is so nearly identical with the present one that the reasoning of the court is here quoted somewhat at length:

"We think it clear that if defendant were attempting to question the validity of the assignment under the laws of this state, it would be held to have estopped itself from denying it by its unequivocal acts affirming it. Why, if the same acts estopped the creditor here, should he not be estopped from denying it elsewhere? If equity would close his mouth here, his mere removal to another jurisdiction does not open it to effect the same result. It is just as unconscionable to assert in Georgia the invalidity of the assignment as to assert it in Pennsylvania. But it is argued by appellee, if the assignment in Pennsylvania cannot pass lands in other states, where the conveyance does not conform to the laws of the *situs*, then by the assignment the property is not subject to the claims of the general creditors, and the defendant, in levying its attachment upon it, impairs no right of any creditor under the assignment; and, further, to restrain the attaching creditor is to in effect decide a question of foreign law, which the weight of authority holds should be decided by the foreign courts.

"As before noticed, without inquiry as to whether, under the laws of Florida and Georgia, the title to the lands in those states passed to the assignee, for the purposes of this case we assume it did not; but this creditor by the most significant acts and assertions of record, averred it did pass, and then took all the benefit possible from affirming the validity of the assignment. Whether it passed or not, it cannot now say it did not. *What acts on the part of a corporation creditor of this state, under an assignment here, shall in equity constitute an estoppel is a question for the courts of this state*; for the creditor voluntarily made itself a party to the assignment—voluntarily adopted the assignee as its trustee in the management and conversion of the very assigned property it now seeks to appropriate."

This case is criticised by the court of appeals and held in conflict with Moore vs. Church, 70 Iowa, and the latter preferred; but in King vs. Glass, 73 Iowa, 205, it was held that objection only went to cases where deeds were in conflict with the policy of the law, as distinguished from details of completion.

In Cole vs. Cunningham, 133 U. S., 107 and Phelps vs. McDonald, 99 U. S., 298, the Supreme Court approves the general principle above stated, and it is not denied by appellees' counsel here, but they urge that it only applies to pending proceedings and not to the enjoining of the execution of a foreign judgment rendered in an attachment proceeding; and the full faith and credit clause of the constitution is invoked.

Congress says that it only means that they shall give the same faith and credit that the state where rendered would give. It was not the intention of the framers and adopters of that vererable charter to require a state to give higher credit to a foreign than to a domestic judgment. On this point see Hayden vs. Yale, *supra*.

That the court of chancery has power to stay proceedings on any judgment at law, was settled long ago.

In 3 Blackstone's Commentaries, 437, the learned author, treating "Of Proceedings in Courts of Equity," says:

> "The courts of equity have acquired a jurisdiction over almost all matters of fraud; all matters in the private knowledge of the party which, though concealed, are binding in conscience; and all judgments at law obtained through such fraud or concealment. And this not by impeaching or reversing the judgment itself, but by prohibiting the plaintiff from taking any advantage of a judgment obtained

> by suppressing the truth, and which, had the same facts appeared on the trial as are now discovered he would never have attained at all."

And in Cole vs. Cunningham, *supra*, this court said:

> "Judgments in another state are not conclusive. They enjoy not the right of priority or privilege or lien which they have in the state where pronounced, but that only which the *lex fori* gives to them by its own laws in the character of foreign judgments. The jurisdiction of the court to pronounce them may be inquired into."

It is contrary to a natural sense of justice to hold that any person is bound by a judgment to which he is not a party. That foreign judgments *in rem* are not conclusive on nonparties is the settled rule both in this country and England.

Imri vs. Castrique, 8 C. B. N. S., 405, was as to the effect of a proceeding to enforce a maritime lien, arising by operation of law, on a ship. It was conceded that if it had been *inter partes* the judgment would not have been binding against persons not parties.

On p. 411 the court says:

> "It is no doubt true that a judgment of this sort which simply decrees the sale of a particular chattel, to satisfy a money demand, hardly falls within the strict definition of a judgment *in rem*, inasmuch as it does not determine the status of the chattel with reference to property."

But it is sustainable on the ground that there is a hypothecation of the vessel.

In Simpson vs. Fogo, 1 H. & M., Eng. Ch., 195,

a mortgaged British ship was attached in Louisiana, the mortgagee intervened, his title was refused and ship sold; when it reached England the mortgagee filed bill to establish his lien—*held* that the Louisiana decree was not binding, because in conflict with the law of England.

The court says (p. 221): "The court of Louisiana sold the ship under a process analogous to our *fifa*, that is to say, they sold all the right and interest of the apparent owners or mortgagors. Of course such sale would simply pass the equity of redemption." (p. 222): The attachment was not a proceeding *in rem*; (p. 278): Such must be to enforce a privilege or lien; property passes only when sold in that manner."

And in Covey vs. Cutler, 56 N. W. Rep., 255, an assignee in Minnesota sued a Minnesota creditor for the conversion of certain property, sold in Wisconsin under judgment and execution against the insolvent. *Held*, under *In Re* Paige & S. Lumber Co., 31 Minn., 136, that a voluntary conveyance good by the laws where made, passes the title wherever the property may be situated, and a verdict for plaintiff was affirmed.

> "It is not too late to intervene after judgment in the attachment proceedings when the proceeds of sale are in the court's hands awaiting distribution."
>
> Hockaday vs. Drye, 54 Pac. Rep., 475.

It may be doubted whether there is any such thing in America as a proceeding *in rem* unless it be in admiralty or under the revenue laws.

In support of the proposition that a judgment of condemnation in attachment is not a judgment *in rem*, binding on persons not parties to the attachment pro-

ceedings, the counsel for appellants call attention to the following authorities:

Mankin vs. Chandler, 2 Brock, (U. S.) 125.

Opinion by Chief Justice Marshall, sitting in circuit court.

Magee vs. Beirne, 39 Pa. St., 50.
Woodruff vs. Taylor, 20 Vt., 65.

Where the court says:

> "They are not based on any allegation that the right of property is to be determined between any other persons than the parties to the suit; no notice is sought to be given to any other persons, and the judgment being only as to the *status* of the property as between the parties of record it is, as to all other persons, a mere nullity."

Samuel vs. Agnew, 80 Ill., 553.
Freeman on Judgments, § 607 *a*.
Bigelow on Estoppels, pp. 49-50, Ch. 2, § 1.
Wells on Res. Adjudicata, §§ 556 and 578.

> "Attachment is only a proceeding *quasi in rem*, and, therefore a judgment does not conclusively bind a stranger to the proceedings whose rights of property have been violated by the seizure under the writ."

The counsel for appellees rely strongly on Green vs. Van Buskirk, 7 Wall., 139, as conclusive that a foreign judgment condemning attached property cannot be attacked; but the distinctions between that case and the present one are obvious. That was an action at law for the conversion, not a bill in equity to prevent the conversion. That was an action by a mortgagee,

and not by creditors claiming equally with the suing creditors, under a trust for their joint benefit. The decision in that case was also based on want of notice of the mortgage to the creditor attaching, and actual notice of the attachment proceeding given to the mortgagee, and his failure to appear and contest. Here it is admitted that appellees knew of and accepted the trust deed before they levied the attachment, and it is not pretended that the appellants had any notice of the attachment proceedings until after judgment.

In that case we find on page 141, in the statement of the case by the reporter:

> "After the levy of the attachment Green received notice of the mortgage and the claim under it, and Van Buskirk and the others, mortgagees, were informed of the attachment; but they did not make themselves parties to it and contest the right of Green to levy on the safes, which they were authorized by the laws of Illinois to do."

And on page 147, in the opinion of the court:

> "If Green at the date of the levy of his attachment did not know of this mortgage, and subsequently perfected his attachment by judgment, execution and sale, the attachment held the property, although at the date of the levy of the execution he did know of it."

And an examination of the case shows that this court did not refuse to review the Illinois decission, but did so and came to the conclusion that it was right under the Illinois law, and that that law governed because of the peculiar facts in that particular case, mainly want of actual or constructive notice of the mortgage.

There is not the conflict between courts or countries, between the State of Maryland and the District of Columbia, that the counsel for appellees would have your honors imagine. Had the Maryland court been advised of the facts set forth in the bill, it would never have rendered the judgments complained of. If the appellants saw fit to intervene in the attachment suits, even after judgment, it would not be too late (Hockaday vs. Drye, *supra*). But they are not compelled to go there; they can intervene or interfere here, where the parties all reside (Kendall vs. McClure Coke Co., *supra*), and the questions at issue are properly determinable here and according to our own laws. And if the deed of trust here seems in any respect defective to pass the Maryland property, by the Maryland law, it can be required to be corrected.

See Towne vs. Campbell, 35 Minn., 233, a case of supplementary proceedings by a creditor.

> "To reach, for the purpose of satisfying a creditor's demand, real estate lying out of the jurisdiction, the court of chancery could appoint a receiver, and compel the debtor to execute to him such conveyance as would be effectual to pass the real estate, according to the law of the state or country where it is situated."

Citing:

Mitchell vs. Bunch, 2 Paige, 606 (22 Am. Dec. 669).

Bailey vs. Ryder, 10 N. Y., 363.

THE DISTRICT COURT CAN ENJOIN.

One other question raised by appellees remains to be considered. It is argued that no matter what may

be the equities, or the power of courts of the domicil over foreign judicial proceedings, yet because of Sec. 720, U. S. Rev. Stat., which forbids "any court of the United States to stay proceedings in any court of any state, except in bankruptcy proceedings," no injunction can be granted. This section was enacted in 1873, and was a revision of an early statute. It was evidently passed, not as counsel for appellees state it, "to prevent unseemly conflicts between courts of different jurisdictions," but to prevent, as suggested in Whitney vs. Wilder, which they cite, unseemly conflicts between the state and the federal courts located within the same territory. It has already been quite liberally construed beyond its letter. Thus it has been held that it does not apply where the U. S. courts have taken jurisdiction first, nor forbid an injunction against the institution of suits. See 10 Blatchford (Fisk vs. Railway Co.), and 54 Fed Rep., 547. At all events, the supreme court of the District is not, in a proceeding like this, acting as a court of the United States within the meaning of that section. The functions of this court are dual. In matters of civil controversies, especially between its own citizens, it has the functions of a state court. The District court of appeals did not in U. S. vs. Mills, cited by appellees, hold, as they assume, that this section applied to the District supreme court. An examination of that opinion shows that the only approximate question involved was whether the police court was a court of the United States within the meaning of a certain section, and it was held that it was not, because of local acts indicating the contrary. Some casual expressions are found in the opinion to the effect that the words "court of the United States" comprehend the district supreme

court, but the court had not before it the proposition, and, therefore, could not and did not determine that this was true in all cases where the words are used. If appellees' contention be correct, we have the anomalous condition of affairs that all states have the right to enjoin each other's courts, while the District of Columbia, a sovereignty for such purposes, is powerless to prevent its own citizens from robbing each other by wrongful and oppressive litigation, if they only step outside of the district line to do so.

Then, whatever may have been the law in 1873, a local statute since passed has unquestionably conferred the power of injunction. At the same time that the U. S. Revised Statutes became the law there was passed the Revised Statutes of the District, and under that revision the only civil jurisdiction given the supreme court was in sections 760 and 762 giving the same jurisdiction as the circuit and district courts; Sec. 763 gave the court jurisdiction only in criminal and penal cases arising in the district. Congress soon found that the restriction on the civil jurisdiction hampered the court in the matter of civil cases arising between residents, and on February 27, 1877, amended sec. 763 by prefixing these words:

> "Said court shall have cognizance of all cases in law and equity between parties both or either of which shall be resident or be found within said district."
>
> 19 Stat. L., 240, Supp. 279, and Abert's Compiled Statutes, p. 296, § 22.

The granting of "cognizance" of all cases in equity necessarily conferred the power to issue the writ of injunction to stay proceedings in a state court, where it would be proper in any similar case as between dif-

ferent sovereignties. The lower court while not deciding this question argues and intimates strongly and rightly that an injunction is not forbidden in this case by this statute.

The question of the right to enjoin proceedings is, however, immaterial under the present record. The prayer of the bill is in the alternative.

> "If this cannot be done that the attaching creditors be directed to bring into court any moneys realized from said land, etc."

The restraining order was modified so as to permit the sale of the land to go on, and, while it would be travelling out of the record to say it has been made, the presumption arises that it has.

APPELLEES NOT GUILTY OF LACHES.

To be guilty of laches the party must have some notice of what is going on, and be apprised that his intervention will be available. The first judgment was rendered Nov. 11, 1896, and immediately the bill in equity to determine Scott's interest was filed, and was pending eighteen months before a final decision was reached. It is not pretended that the appellees had any notice or knowledge of what was going on, and none will be presumed where the proceeding is in a foreign state. Within a month after the property was held subject the appellees intervened with this suit. As we have noted, a claimant has a right to intervene any time after judgment before the attached property or its proceeds shall have been turned over to the plaintiff.

Hockaday vs. Drye, *ante*.

The citation from High on Injunctions, quoted in appellees' brief, to the effect that it must appear affirmatively that the judgment was not caused by any inattention or negligence on the complainant's part, before he can obtain an injunction, on its face shows that it relates only to a judgment at law, directly against him, in a suit to which he was a party. It has been held that a bill in equity which shows laches on its face is bad on demurrer, but no decision can be found that in a case like this laches will be inferred.

There is a show of reason in the contention that appellees' litigation ought not wholly to inure to the benefit of the appellants, but it goes too far in taking the position that they should derive no benefit from it whatever.

Precisely the same question was urged in Geilinger vs. Philippi, 133 U. S., *ante*, that it would be unjust to permit the general creditors to appropriate property which a particular creditor had discovered, fought for and recovered for himself; and both the lower and the upper court held that an order directing the reimbursement of his costs in subjecting it, gave him all the relief he was entitled to. No objection can be offered to the court below on final hearing making a similar order, and it will doubtless do so.

CONCLUSION.

While the questions involved are numerous and interesting, I feel confident that the court will solve them in favor of the appellants, reverse the decree and allow the cause to proceed to a hearing on its merits, if the appellees should see fit to answer.

O. B. HALLAM,
Attorney for Appellants.

No. 251.

Petition for Rehearing.

Rec'd & Dist'd May 22, 1900

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,

vs.

HORATIO BROWNING ET AL., Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Petition of Appellants for Rehearing.

O. B. HALLAM,
Attorney for Appellants.

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,

vs.

HORATIO BROWNING ET AL., Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Petition of Appellants for Rehearing.

Convinced of the inherent justice of the appellants' cause on its merits, and convinced also from a reading of the opinion of the court filed in this cause that the court overlooked what we consider a controlling previous opinion on the question of jurisdiction, and that the cases cited by it in support of its opinion, while unquestioned and unquestionable as authority, are not applicable, or at least not controlling, as to the particular question of jurisdiction involved in the present appeal, counsel for appellants respectfully asks a rehearing of the cause, with a view that jurisdiction of the appeal may be upheld and the case heard and determined on its merits.

AS TO GIBSON VS. SHUFELDT, 122 U. S., 27.

This is the principal case cited by the court. There a number of creditors were joined in a suit to set aside a trust conveyance as fraudulent—the creditors not claim-

ing a joint interest under the deed, but severally, adverse to it. The court dismissed the appeal as to all, except one, who had a claim of more than $5,000, but upheld it as to that one, and in so doing used these expressions among others in the course of its opinion.

"In equity when the sum sued for is one in which the plaintiffs have a joint and common interest the whole sum sued for is the test of the jurisdiction (p. 33)."

"In equity when several persons join in one suit to assert *several and distinct* interests and those interests alone are in dispute the amount of each is the limit of the appellate jurisdiction (p. 34)."

Hence it was held in that case that the claims were several and distinct, and that the appeal must be dismissed as to all except one creditor who had a claim of over $5,000—jurisdiction of that claim was taken and the decree below reversed as to the dismissal thereof.

It is immaterial from that standpoint on the present appeal, for purposes of jurisdiction in part at least, to discuss whether the interest of the appellants is joint or several, for one of the claims, that of Mrs. Chamberlin, is $25,000 (Record, p. 5).

But we insist that not only her claim but those of all the other appellants must be considered, because they all claim by virtue of the deed of assignment for their joint benefit, and pray (Record, p. 7) that the assets sought to be recovered be distributed among all of *Scott's* creditors.

This court in its opinion says "If appellees could not, if recovery had been had against them, unite their separate interests for the purpose of an appeal, the appellants cannot do so for the purpose of asserting appellate jurisdiction in this court." This proposition thus laid down by the court, if not a *non sequitur* generally, is so in this particular case, and is in conflict with the view announced by this court in the following case.

AS TO ESTES VS. GUNTER, 121 U. S., 185.

This case seems nearly on all fours with the present one and was relied on by counsel in taking this appeal.

If not overlooked, it certainly is not referred to by the court in its opinion, and I call anew attention to it, insisting that the doctrine of *stare decisis* should be adhered to in matters of practice at least.

There a preferred creditor for $10,000 under a deed of trust sought to defeat certain attachments of Beckham & Moore for less than $5,000, and the court refused to dismiss the appeal, took jurisdiction and reversed the decree dismissing the appellants' bill (S. C. 122, U. S., 450) for the following reasons stated in the opinion.

"The suit was brought not only to defeat the attachment, but to establish the assignment and make it available. The effect of what has been done is to defeat the claim which Estes and Doan have set up in their bill, and so far as now appears it matters not to them what disposition is made of the assigned property."

The case at bar is practically identical. Creditors to the amount of $35,000 suing for themselves as well as other creditors $50,000 more in value ask to have the assignment "established and made available" as to the Maryland land of $15,000 value.

It is respectfully submitted that this court is in error when it says in its opinion: "Recovery of land or its value was not the relief sought by the bill below." The bill after reciting the nature of the title to the land alleges (par. 12 p. 5 of record), "all title which said Scott had in said land passed by the deed of assignment" and the 5th, 6th and 7th prayers of the bill (Record p. 7) pray distinctly that it, or its proceeds if sold, be turned over to a new trustee, or to the court. This is especially emphasized by the fifth prayer—asking that defendant Scott be required, if need be, to execute a new deed to

the new trustee, more specifically conveying the fee simple which it is asserted was constructively conveyed by operation of the statute.

It would appear, therefore, immaterial to consider whether the claims of the attaching creditors in the aggregate amount to more than $5,000, and it is not on that idea at all that jurisdiction is contended for, except incidentally (Record p. 6) it is alleged that the attaching creditors were proceeding jointly. In Estes *v.* Gunter, it is distinctly held that where the *property* which is sought to be established as conveyed by the trust is of more value than $5,000 it is immaterial that an attachment is for less for $5,000. The only diffierence, wholly immaterial, is that there one creditor wanted the fund and here several having a common interest ask it.

The other two cases cited in the court's opinion are even much less in point. *Friend v. Wise*, 111 U. S., 797, is one where the court held that the value of two sections of land claimed jointly and of the joint value of $5,000 gave the court jurisdiction. Henderson *v.* Wadsworth, 115 U. S., 276 is one where *several* judgments were rendered against different parties and the appeal was dismissed as to all except one for over $5,000, as to which it was reversed.

The ruling in Estes *v.* Gunter, seems to me to fit exactly the present case in view of the allegations contained in the bill As it is omitted from the court's reasoning, I respectfully ask its rereading and comparison with the facts here alleged, confident that the court when doing so will hold that jurisdiction of this appeal attaches.

O. B. HALLAM,
Attorney for Appellants.

I hereby certify that in my judgment the foregoing petition for rehearing is well founded in law.

O. B. HALLAM,
Attorney for Appellants.

No. 251.
Br. of Birney, Edwards & Peter
for Appellees

FILED
APR 14 1900
JAMES H. McKENNEY
Clerk

Supreme Court of the United States

OCTOBER TERM, 1899.

Filed April 14, 1900.

No. 251.

GEORGETTE A. CHAMBERLIN ET AL., APPELLANTS,

vs.

HORATIO BROWNING ET AL., APPELLEES.

Appeal from the Court of Appeals of the District of Columbia.

Motion to Dismiss and Brief for Appellees

A. A. BIRNEY,
JAS. S. EDWARDS,
ARTHUR PETER,
Solicitors for Appellees.

LAW REPORTER PRINT.

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN ET AL., APPELLANTS,

vs.

HORATIO BROWNING ET AL., APPELLEES.

Appeal from the Court of Appeals of the District of Columbia.

Motion to Dismiss and Brief for Appellees.

Come now the appellees, Thomas T. Keane, Edward O. Whitford, Central National Bank, and Browning & Middleton, and move the court to dismiss the appeal herein, for that it does not appear from the record that the matter in dispute exceeds the sum of five thousand dollars.

A. A. BIRNEY,
JAMES S. EDWARDS,
ARTHUR PETER,
Solicitors for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1899.

GEORGETTE A. CHAMBERLIN ET AL., *Appellants*,
vs.
HORATIO BROWNING ET AL., APPELLEES. } No. 251.

STATEMENT OF THE FACTS.

In 1888, John B. Scott being the owner, in fee simple, of a tract of land in Montgomery County, Maryland, conveyed the same to a certain Coughlan by whom it was at once reconveyed to the said Scott, for life, with a general power to sell, mortgage or devise the same, and after his death to his two daughters, Mary Elizabeth Scott and Margaret Adelia Scott, in fee simple. At the time of making said conveyances Scott was solvent and did not become indebted to any great extent for about eight years thereafter. The claims of the appellees and appellants did not come into existence until about seven years after the execution of said deeds. On April 24, 1896, the said Scott, a resident of the District of Columbia, made an assignment for the benefit of creditors (amongst whom were the appellants and appellees) to Horatio Browning, also a resident of the District, which was recorded among the land records of the District of Columbia on the next day, April 25, 1896. The deed of assignment purported to convey—

> "all and singular the real estate, goods, chattels, merchandise, effects, stocks, promissory notes, debts, claims, demands and property of him the said Scott, (except all legal exemptions which are hereby reserved by said Scott) *the same being fully described in Schedule 'A' hereto annexed.*"

The only reference in Schedule "A" to the Maryland property was:

> "*Estate for life* of said Scott in 25 acres of land in Montgomery County, State of Maryland, particularly described in deed recorded in Liber J. A. No. 11, folio 241 *et seq.*"

The appellants are creditors of the said Scott in various amounts, the largest claim being that of Georgette A. Chamberlin, executrix, who alleges that she holds Scott's notes to the extent of $24,110.96 upon which she has received payments reducing the same 16 per cent. (Rec. p. 5). The bill does not disclose the amount of the claims of all Scott's creditors who are entitled to come in under the deed assignment, but it appears from the affidavit of Henry K. Simpson, filed by the appellants (Rec. p. 10), that the same amount to $85,848.52, whereas the schedule annexed to the deed of assignment (Rec., pp. 15–17) discloses liabilities to the amount of $78,354.67.

On the 10th of May, 1896, the appellee Keane instituted non-resident attachment proceedings in the Circuit Court for Montgomery County, State of Maryland, against Scott and had the writ levied upon the land in question. On June 3, 1896, the said Browning obtained the deed of assignment from the Recorder of Deeds of the District of Columbia, where it had been awaiting its turn to be copied into the records, but the said Keane had long prior obtained a lien on the Maryland real estate for an amount exceeding the value of the life estate, which was all the deed of assignment purported to or could have conveyed, therefore, Browning though he filed the deed for record in Montgomery County on the 3d day of June, 1896, did not at this time nor has he since filed a bond as is made necessary by the Maryland Code (Article 16, Section 205. See brief hereto for terms of statute), before any title could pass to him as assignee, no interest which the deed pur-

ported to convey remaining for protection. On September 28, 1896, the appellee, Whitford, caused a writ of attachment to issue out of said Circuit Court of Montgomery County against said Scott and laid upon the lands in question. On September 29, 1896, the same proceedings were taken by the Central National Bank and the firm of Browning & Middleton, and on October 20, 1896, by Timothy D. Daly, and on — day of December, 1897, by the defendant Browning.

On November 11, 1896, Keane obtained judgments of condemnation of the land in the aggregate to the amount of $1,829.54 and in the following March the other appellees obtained similar judgments, Whitford for $535.80, Central National Bank for $3,049.69, Browning & Middleton for $2,217; Daly also obtained a judgment in March, 1897, for $1,173.83, and Browning in January, 1898, for $1,409.50.

On December 22, 1896, Keane filed a bill in equity against said Scott and daughters and said Coughlin in the Circuit Court for Montgomery County, alleging that said conveyances from Scott to Coughlin and from Coughlin to Scott were, upon their face, fraudulent as to subsequent creditors, of whom he was one, and praying that the same might be vacated, so as to leave the fee simple in Scott under the original deed to him. The defendants, Scott and daughters, answered said bill denying fraudulent intent; alleging that said Scott conveyed to his assignee his life estate, which was all the interest he had in said property; that the remainder in fee belonged to his said daughters, and praying that the bill might be dismissed. The case was heard on bill and answer, and the Circuit Court for Montgomery County, on July 16, 1897, granted the prayers of complainant and vacated the deeds as to him. An appeal was taken to the Court of Appeals of Maryland and on June 28, 1898, said decree was there affirmed. On July 23, 1898, writs of *fieri facias* were issued upon the aforesaid judgments of condemnation and

the property advertised for sale under the Keane judgment, sale to take place on August 27, 1898 (Rec., pp. 3, 4 and 5.)

On August 25, 1898, nearly two years after Keane's judgment of condemnation, the appellants, general creditors of Scott, filed their bill in equity in the Supreme Court of the District of Columbia against the appellees and against Browning in his own right and Daly setting forth these facts and further alleging that the defendants in said bill were residents of the District and had notice of said assignment and had received dividends at some indefinite time from the assignee—

> "that it was the intention of the said Scott, well known to the said Browning, to convey, as he states in the deed of assignment, all his property except legal exemptions, and the use of the term 'estate for life' in reference to the Maryland land was an attempt to describe all the interest which he had therein and *had he known* that the court would hold that the deed under which he held was constructively fraudulent in its limitations and vested in him the fee simple, he would have so listed it in his schedule."

The bill then sets up various matters connected with the operation of the assignment in Washington and property situated here, whereby they seek special and singular relief against the defendant Browning, and then pray for an accounting with Browning, discovery from Scott, the removal of Browning and the appointment of a new assignee, that Scott be required to execute a new deed more specifically conveying the fee simple to said Maryland property, that the appellees and the other defendants therein be restrained from in any manner proceeding to enforce their said judgments of condemnation, and from doing any act to prevent the property in Maryland from being distributed to all creditors alike; and on hearing, said injunction be made perpetual; or, if this could not be done, that the appellees be directed to bring into court for equal distribution amongst all the creditors the money derived from said land.

A restraining order enjoining the defendants to said bill including the appellees, as prayed therein, was passed *ex parte* by the court on the day of the filing of the said bill. On the succeeding day the appellant Keane, filed an affidavit denying any participation in the assignment or any acceptance of a dividend thereunder, and moved the discharge of the restraining order; the court modified the same so as to permit a sale of the property, but continued it in all other respects (Rec., pp. 8 and 9). The land was sold for $8,500, insufficient to pay the judgments of the appellees in full, and leaving nothing for the other judgment creditors, whose judgments were subsequent in point of time, viz., Browning and Daly. The appellees separately demurred to the bill of complaint on the following grounds, viz: (1) Said bill is multifarious; (2) Complainants showed no such interest in the property involved as entitled them to file said bill and seek the relief prayed; (3) Because the court is without jurisdiction to proceed as prayed; (4) Because of complainant's *laches* apparent upon the face of said bill; (5) For numerous other reasons apparent upon the face of said bill.

The Supreme Court of the District of Columbia overruled said demurrers and continued the injunction, from which decree the appellees herein, viz.: Keane, Whitford, Central National Bank and the firm of Browning & Middleton, being, by reason of the price the property brought, the only defendants to said bill interested in obtaining a reversal thereof, prosecuted a special appeal to the Court of Appeals of the District of Columbia. The last named court, on the 12th of January, 1899, reversed said decree and remanded the cause, with directions to sustain the demurrer, dissolve the injunction and dismiss the bill as to the appellants there, Keane, Central National Bank, Whitford and the partnership of Browning & Middleton, and for further proceedings against the defendant Browning, as assignee, not inconsistent with the opinion of said court. Thereafter, on the 31st day of January, 1899, the Supreme Court of the

District of Columbia, in obedience to the mandate of the Court of Appeals, entered a decree in conformity therewith, from which decree the appellants appealed to the Court of Appeals of the District of Columbia, which affirmed the last mentioned decree of the Supreme Court of the District of Columbia, from which decree of affirmance the appellants prosecuted this appeal to the Supreme Court of the United States.

Brief Upon Motion to Dismiss.

This is a suit brought by several creditors, claiming under a deed of assignment for the benefit of creditors, to restrain the appellee, Keane, from enforcing several judgments, aggregating $1,829.54, the appellee Whitford from enforcing a separate judgment for $538.30, the appellee The Central National Bank from enforcing a separate judgment for $3,049 69, and the appellee Browning & Middleton from enforcing a separate judgment for $2,217.00 against a tract of land in Maryland which, it is claimed, passed or was intended to pass under the assignment. The judgments of the several appellees sought to be enjoined are entirely separate and distinct from each other, being rendered in separate and distinct actions. The bill prays that if the injunction can not be granted, that the appellees may be directed to bring into court for distribution among all the creditors any moneys they may realize out of said land by the means of their separate judgments. The enjoining of these judgments or the decreeing that the appellees bring in the respective amounts they may receive thereunder, is the only relief prayed against appellees. To obtain this relief the appellants rely upon the alleged facts that appellees are each residents of the District of Columbia and that each separately accepted a benefit, viz., a dividend, under said assignment, and is thereby estopped

from proceeding against property in Maryland which it is imagined that the deed of assignment attempted to and did convey, that they had the same attorney in Maryland, and that the other appellees knew that if Keane succeeded in his suit there against Scott, it would be advantageous to all of them. From these allegations an attempt is made to claim that the judgment of each appellee is the judgment of the other, and that the appellants may combine all the judgments in order to raise the amount in dispute to over $5,000. It is evident, however, that—

> "The recovery, if any, must be against each appellee separately for the amount he may personally be found accountable."

Though each appellee has substantially the same grounds of defense and the questions in each instance are substantially the same, yet the appellees' grounds of suit against each depend upon a separate residence and a separate act, in accepting a dividend, which may be true as to some and not as to others. Basing their claim upon these unconnected acts of the appellees, the appellants seek to deprive them of their separate property rights, viz.: distinct judgments, no appellee being interested to the amount of $5,000. To do this the defendants must be separately enjoined or decreed to separately bring into court the amounts of their respective judgments.

> "It is well settled that neither co-defendants nor co-plaintiffs can unite their separate and distinct interests for the purpose of making up the amount necessary to give this court jurisdiction upon writ of error or appeal."
>
> Henderson *vs.* Wadsworth, 115 U. S. 176.

> "Distinct judgments in favor of or against distinct parties cannot be joined to give this court jurisdiction."
>
> Adams *vs.* Crittenden, 106 U. S. 577.

The last cited case is directly in point, precisely similar as to the facts and effectually disposes of this question. See also:

Schwed *vs.* Smith, 106 U. S. 188.
Ex parte B. & O. R. R., 106 U. S. 576.
Hawley *vs.* Fairbanks, 108 U. S. 548.
Tupper *vs.* Wise, 110 U. S. 399.
Oliver *vs.* Alexander, 6 Peters 143.
Paving Co. *vs.* Mulford, 17 How. 3.

> "Upon the same principle neither party can appeal from a decree upon a bill by a single plaintiff to enforce separate and distinct liabilities against several defendants, if the sum for which each is alleged or found to be liable is less than the jurisdictional amount."
>
> Gibson *vs.* Shufeldt, 122 U. S. 37.

It is obvious that the matter in dispute between the appellants and the appellees are these judgments and not the land. The appellees never claimed or had any title to the land. Their rights were to their judgments which happened to be a lien upon the land in favor of each to the extent of his separate judgment and, so far as the appellees are concerned, the effort is to deprive each of his judgment, and not to deprive each or all of them of the land, the title which they have never had nor claimed.

> "In Farmers' Bank of Alexandria *vs.* Hoof, 7 Pet. 168, this court dismissed an appeal from a decree of the Circuit Court for the District of Columbia dismissing a bill to have land worth more than $1,000 sold for the payment of a debt less than $1,000, which was the limit of the jurisdiction, Chief Justice Marshall saying: 'The real matter in controversy is the debt claimed in the bill and though the title of the lot may be inquired into incidentally, it does not constitute the object of the suit.'
>
> "In Ross *vs.* Prentiss, 3 How. 771, land worth

more, and mortgaged for more than $2,000 was about to be sold on execution for a debt of a less sum, and a bill by the mortgagee to stay the sale was dismissed. He appealed to this court, and insisted that its jurisdiction depended on the value of the property, and the amount of his interest therein, and that he might lose the whole benefit of his mortgage by a forced sale on execution. But the appeal was dismissed, Chief Justice Taney saying: 'The only matter in controversy between the parties is the amount claimed on execution. The dispute is whether the property in question is liable to be charged with it or not. The jurisdiction does not depend on the amount of any contingent loss or damage which one of the parties may sustain by a decision against him, but upon the amount in dispute between them; and as that amount is in this case below two thousand dollars, the appeal must be dismissed.'"

Gibson *vs.* Shufeldt, 122 U. S. 29.

It is respectfully submitted that the matter in dispute does not exceed $5,000, and the appeal should be dismissed.

A. A. BIRNEY.
JAS. S. EDWARDS.
ARTHUR PETER.

BRIEF UPON THE MERITS.

POINT I.

The land in question is situated in Maryland and the construction and effect of the deed of assignment as regards the same, must be determined by the laws of that State. Under the laws of Maryland the deed of assignment, under its express terms, did not attempt to pass more than the life estate in the property, by its terms could not have passed more, and the assignee could not by any proceedings have obtained more. The appellants are simple contract creditors, and any rights which they have in the land in question must be derived from the deed of assignment. Therefore, in any possible view of the case, they were never interested in more than the life estate which was practically worthless.

The only property within the comprehension of this case is the land situated in Montgomery County, Maryland.

> "The operation of the deed of assignment as a conveyance of its title must depend solely upon the laws of Maryland; for it is an unquestionable principle of law, here and everywhere, that the title and disposition of real property are exclusively subject to the laws of the State wherein it lies, which can alone prescribe the mode whereby the title can be passed from one person to another."
>
> Opinion of the Court of Appeals in this case, p. 27 of the Record.

> "As to the assignment, under the Statute of Connecticut, it is very clear that Powell's title to real estate within this commonwealth could not pass thereby. The title and disposition of real estate is

exclusively subject to the laws of the country where it is situated, which can alone prescribe the mode by which a title to it can pass."

Osborn *vs.* Adams, 18 Pick. 247.
McCormick *vs.* Sullivant, 10 Wheat. 192, 202.
United States *vs.* Fox, 94 U. S. 315, 320.
Robertson *vs.* Pickrell, 109 U. S. 608, 611.
Schley *vs.* Pullman Car Co., 120 U. S. 575, 580.
Langdon *vs.* Sherwood, 124 U. S. 74, 81.
Arndt *vs.* Griggs, 134 U. S. 316, 321.

That the rule laid down above is applicable to deed of assignment for the benefit of creditors, see—

Loving *vs.* Pairo, 10 Iowa, 282.
Gardiner *vs.* Bank, 95 Ill. 298, 304.
Jenks *vs.* Ludden, 34 Minn. 482, 486.
Thompkins *vs.* Adams, 41 Kan. 38, 48.

Cases cited on behalf of the appellants go no further than to hold that, where an assignment for the benefit of creditors has been made in one State, it will pass the title to personal and sometimes to real property in another State, as against citizens of the former, when the deed of assignment, *in its form and execution, is in substantive compliance with the laws of the latter State regulating conveyances of the title to such property, and does not expressly contravene the laws and established public policy of the State where the property is situated,* but conflicts only in some of its administrative features with the local law regulating the administration of such trusts for the benefit of creditors.

Substantially opinion of the court below, p. 27 of the Record.

The general terms in the body of the deed of assignment in question are restricted by a reference for a more full and particular description to the schedule annexed. The schedule expressly restricts the conveyance to a life estate

(Rec., pp. 13, 14). Under the laws of Maryland, by which we have seen the effect of the deed must in this instance be determined the schedule governs and the courts of that State would hold that the assignment only conveyed a life estate to the assignee.

Mims *vs.* Armstrong, 31 Md. 96.

Moreover, Scott, the assignor, only had a life estate to convey to the assignee, the powers conferred upon him by the deed from Coughlin constituted no estate and a court of equity would not have compelled him to exercise those powers at the instance of creditors for their benefit. The Court of Appeals of Maryland, in construing the deed under which the assignor held at the time of the assignment, said that he only had a life estate, and that the powers did not enlarge it to a fee simple.

> "It may also be assumed that notwithstanding the power of disposition reserved, Scott would only take a *life estate*, for when property is given *expressly for life* with a power of disposition superadded, the first taker only has a life estate with the power annexed. The distinction between such a gift and one to a person *generally* or *indefinitely* with a power of disposition (a distinction that is said to be slight but perfectly well established) is recognized in Benesch *vs.* Clark, 49 Md. 497; Foos *vs.* Scarf, 55 Md. 301, and other cases in this State, and we therefore assume that unless the powers are executed, if the deed is valid, Scott only has a life estate and that estate is liable for his debts. But a life estate is of little value as compared with the absolute ownership in fee," etc.
>
> Scott *vs.* Keane, 87 Md. 709.

That a court of chancery will not compel the donee of a power, general or special, to exercise it in favor of his creditors when there has been no attempt on his part to exercise it, has been too frequently settled to need citation of authority. See, however—

Sugden on Powers, 3d Amer. Ed., p. 26, Vol. 2.

In no part of the deed of assignment does the assignor attempt to exercise the powers, which powers he must have exercised before he could defeat the fee simple of his daughters in the land.

A power can be validly exercised by deed in only three ways:

> "First, by a direct reference to the power; secondly, by a disposition of the subject of the power when the person making the disposition possesses a mere naked power of appointment, coupled with no interest; and, thirdly, when the instrument relied on as an execution of the powers would be inoperative unless aided by the power."
>
> Farlow *vs.* Farlow, 83 Md. 122.

That Scott did not by the deed of assignment exercise the powers reserved to him is settled by Ridgely *vs.* Cross, 83 Md. 161.

Even if Scott had attempted to exercise in the deed of assignment the powers he possessed the fee simple could not have passed to the assignee since Scott had no right to exercise the powers for that purpose. By the terms of the deed creating the powers Scott could *sell*, mortgage or devise the property; but a conveyance by deed of assignment is not a mortgage nor a will, and does not amount to sale.

As we have seen, the Maryland courts held that Scott only had a life estate in the property, but that deeds under which he held *were, as to the appellees*, voidable for implied fraud. They were not void as between Scott and his daughters, and Scott could not have complained of his own fraud and obtained from a court of chancery a decree annulling the deeds so as to obtain for himself the fee simple. And if Scott could not, neither could his assignee, who is not a *bona fide* purchaser for value and has no greater rights than his assignor.

> "There is no statute in Maryland, as there is in some of the States, which has extended the powers

> of the assignee in this respect, and under the common law of assignments the assignee stands in the place of the assignor, and can assert no claim to property which the assignor might not. The assignment does not, therefore, carry with it to the trustee the title to property which the assignor has previously transferred in fraud of his creditors. In such case the creditors are left to pursue their remedies with respect to such property just as if no assignment had ever been made."
>
> Luchmeyer *vs.* Seltz, 61 Md. 324.

It thus appears that even in the absence of other objections the assignee in the deed of assignment under which appellants claim could not in any event have obtained more than the life estate in the land. Had he gone to the Maryland courts they would have refused him more because they would have said:

> "The assignor had only a life estate, but if he had more he only conveyed to you a life estate; you have no greater rights than he, and therefore can not be permitted to have the deeds from Scott to Coughlin and from Coughlin to Scott set aside so as to obtain the fee simple."

The bill in this case seeks to enjoin the sale of any interest in the land in question, and to compel the appellees to bring in all the proceeds of sale, whereas it is obvious that in any view of the case the appellees are only interested to the extent of a life estate therein, and that life estate the Maryland Court of Appeals said was of little value.

The appellants claim, however, the fee simple in the Maryland land passed to the assignee by virtue of an act of Congress contained in Vol. 27, U. S. Statutes at Large, page 474, relating to assignments in the District of Columbia, which requires the assignor to attach to the assignment an inventory of the property assigned, and then provides:

> "But such inventory shall not be conclusive as to the amount of the debtor's estate, but such assignment shall vest in the assignee or assignees the title to any other *property belonging to the debtor* at the time of making the assignment, and comprehended within the general terms of the same."

It is clear, from the authorities heretofore cited in this brief, that this statute can not determine the construction and effect that a Maryland court will give to the assignment in its relation to real estate in Maryland.

If the law were otherwise and the Maryland courts were bound to let the act of Congress affect the devolution of real property in Maryland, still the appellants' claim to the fee simple would not be substantiated. The Act of Congress refers to property belonging to the assignor, not to powers of which he is the donee and the execution of which for their benefit the creditors could not compel. But as we have seen, under the Maryland court's construction of the deed from Coughlin to Scott, which it is not contended the Act of Congress could affect, Scott only had a life estate—the fee simple did not *belong* to him. Again, though the Act of Congress makes the general terms of the assignment and not the inventory determine what property passes thereunder, yet in this case the general terms of the assignment indicated no intention to exercise the powers without which Scott could not defeat the fee simple of his daughters.

Again, the statute does not operate upon property previously conveyed in fraud of one's creditors, since such property does not *belong* to the assignor.

The appellants practically admit in their bill that the assignment does not convey, nor attempt to convey, more than a life estate, but seek to evade this by saying it was Scott's intention to convey all his property, and that this was known to one of the appellees (how can this affect the others?) and that had Scott known that the courts would hold

that he had a simple fee, he would have conveyed that instead of a life estate. It appears from the decision of the Maryland Court of Appeals that Scott and his daughters swore in their answer to Keane's bill that Scott intended to convey only a life estate by the deed of assignment. No court would permit the appellants to set up a parol intention opposed to the language of the deed, nor could they do so without making Scott's daughters parties, since in so doing the latter's interest would be defeated. But supposing the law to be otherwise, he did what they say he intended—he conveyed all of his estate, viz., a life estate, as we have seen, a power in no estate; nor did the Maryland courts hold that he had a fee simple, but a life estate; and it was not Scott, but his creditors, who could reach the fee simple by having the deeds set aside.

If the laws of the District of Columbia are to govern then the deeds from Scott to Coughlin and from Coughlin to Scott made nothing more than proper provisions for Scott's family, were not fraudulent as regards the appellees or appellants, all of whose claims accrued long subsequent to the execution of the deeds in question and the rights of Scott's daughters to the fee simple would be upheld in the courts of the District against the assignee, the appellees or the appellants.

Jones *vs.* Clifton, 101 U. S. 225.

From the decision in the last cited case, it is clear that powers reserved to Scott by which *he* might defeat his daughters' fee simple would not pass to the assignee.

In view of the cases last cited the Maryland court when at the suit of the appellees it annulled the deeds from Scott to Coughlin and from Coughlin to Scott, gave to the appellees the fee simple of the daughters in which the assignee or appellants have no interest.

POINT II.

An express statute in Maryland prevents the appellants from having any interest in land in question under the deed of assignment. It would be unconstitutional to act in defiance thereof.

Keane's attachment was levied before the deed was recorded in Maryland and all the attachments were levied before a bond was filed by the assignee. Until this bond is filed no title to the property passes to the assignee, *a fortiori* to those who claim under him.

Code of Md., Art. 16, Sec. 205 et seq.

> Sec. 205: "Every trustee, to whom any estate, real, personal, or mixed, shall be limited or conveyed for the benefit of creditors, or to be sold for any other purpose, shall file with the clerk of the court, in which the deed or instrument creating the trust may be recorded, a bond in such penalty as the clerk may prescribe, being as nearly as can be ascertained, double the amount of the trust estate, and with sureties to be approved by the clerk, conditioned for the faithful performance of the trust, by the deed or other instrument reposed in such trustee, which bond shall be recorded in the office of the said clerk; but when the sale is to be on a contingency, no bond need be given until the contingency happens; *no title shall pass to any trustee as aforesaid*, until such bond shall be filed and approved as aforesaid; and no sale made by any such trustee without such bond, shall be valid, or pass any title to such property or estate."
>
> Sec. 206: "When upon an investigation of the circumstances of the case, the circuit court of the county, or Circuit Court or Superior Court of Baltimore City, shall be satisfied that it would be improper to require a bond to be given for double the amount of the property placed in their hands, or made subject to the disposition of said trustee, the

court may prescribe the amount of the bond to be given by such trustee.

Sec. 207: "If any trustee shall fail or refuse to give such bond for the space of three months after the deed or instrument creating the trust is deposited with the clerk to be recorded, the clerk shall give notice thereof to the court, of which he is clerk, or to the judge thereof, who, upon consideration of the circumstances and upon reasonable notice to the trustee, and such of the parties interested as may conveniently be served therewith, as the court or judge shall prescribe, shall proceed to appoint another trustee in lieu of the trustee who shall have failed or refused.

Sec. 208: "Upon the trustee, so appointed by the court or judge, giving bond as before directed, the whole trust estate shall vest in him, subject to the provisions of the trust deed, or other instrument creating the trust, and the same power may be exercised by the court or judge from time to time until a trustee shall be appointed and give bond.

Sec. 209: "It shall be the duty of the trustee within six months from the period of his giving bond, to make report upon oath to the circuit court for the county or Circuit Court of Baltimore City, of the whole amount of the trust estate and the disposition made of the same; and any sale of leasehold or fee simple property made by such trustee, before taking effect, shall be reported to and ratified by said court.

Sec. 210: "If any trustee shall fail to make report to the court, as required by the preceeding section, the clerk shall issue a summons commanding him to appear before court at the next ensuing term to make such report, and if the summons is returned served, and the trustee shall fail to appear and report, an attachment shall issue to compel an appearance upon which similar proceedings shall be had as in other cases."

The provisions of the above act are imperative and apply to a deed of assignment for the benefit of creditors where

the *assignors* are *non-residents* of the State so far as the deed relates to real property in the State. And if in such case, subsequent to the deed of assignment being recorded in the State but before a bond is given as required by the act, parties, even though they may be *non-residents*, have attachments levied upon the land situated in this State they can not be deprived of their liens by the assignees subsequently filing the bond or by any other act.

White *vs.* Bank, 80 Md. 1.

The act is imperative.

Stiefel *vs.* Cohen, 73 Md. 410.

It requires the sale of lands to be made under the supervision of the Maryland courts.

Moore *vs.* Title Co., 82 Md. 292.

It enables the Maryland courts to remove the assignee.

Thus no title to the property in question has ever passed by the instrument under which the appellants' claim, and this positive act of the Maryland legislature relating to real property in that State must be given effect by the courts of the District of Columbia. The latter cannot dispose of the property in conflict therewith, for such conduct would be in violation of the Constitutional provision requiring full faith and credit to be given the public acts of another State. This would be so even if the property were personal.

The case of Green *vs.* Van Buskirk, 5 Wall. 307 seems to settle this question.

Bates executed a chattel mortgage in the State of New York to secure Van Buskirk on some safes in Illinois. Green attached the same in Illinois before the mortgage was there recorded. All the parties were residents of New York.

By the laws of Illinois no title passed until the mortgage was recorded there. No appearance was entered in the attachment proceedings by Bates *and Van Buskirk was not a*

party. Green obtained a judgment of condemnation and sold the property. Van Buskirk thereupon sued Green in New York, under the laws of which the title had passed to the former, to recover the proceeds, contending that the New York laws governed, and Green could not go outside the State to avoid them. The New York courts so held, but this court reversed the State court and determined that the laws of Illinois governed, and failure to give them effect would be unconstitutional.

And the court in that case says:

> "There is no little conflict of authority on the general question as to how far the transfer of personal property by *assignment* or sale, made in the country of the domicil of the owner, will be held to be valid in the courts of the country where the property is situated, when these are in different sovereignties. The learned author of commentaries on the conflict of law has discussed the subject wtih his usual exhaustive research. And it may be conceded that as a question of comity the weight of his authority is in favor of the proposition that such transfers will, generally, be respected by the courts of the country where the property is located, though the mode of transfer may be different from that prescribed by the local law. *But after all, this is a mere principle of comity between the courts, which must give way when the statutes of the country where the property is situated, or the established policy of its laws prescribe to its courts a different rule.* 'The learned commentator, already referred to, in speaking of the law of Louisiana, which gives paramount title to an attaching creditor over a transfer made in another State, which is the domicil of the owner of the property, says: "No one can seriously doubt that it is competent for any State to adopt such a rule in its own legislation, since it has perfect jurisdiction over all property, personal or real, within its territorial limits.' The court then holds that to fail to give effect to such an act would be unconstitutional."
>
> Green *vs.* Van Buskirk, 5 Wallace, 307.

Butler, Hayden & Co., residents of Massachusetts, through F., of New York, on March 11, 1885, attached, in the last named State, certain *credits* of Bird, who was at that time insolvent and also a resident of Massachusetts. In April, 1885, proceedings in insolvency were taken against Bird in Massachusetts, and on June 1, 1885, assignees in insolvency were appointed. On June 19, 1885, *and before judgment in the attachment suit*, the assignees filed a bill in equity in Massachusetts against Butler, Hayden & Co., alleging that their conduct in bringing the attachment proceedings was contrary to the policy of the Massachusetts laws, which, being residents, they were bound to respect, and prayed that they be enjoined from further proceedings in the attachment suit. The Massachusetts court sustained the bill, and granted the injunction, whereupon a writ of error was sued out in this court on the ground that the action of the Massachusetts court was in violation of Article 4, Sections 1 and 2 of the Constitution. This court, however, sustained the State court in its right to enjoin residents in such cases, *provided* (1) The complainant's claim was not opposedto the policy or law of the sister State where the property was situated; and provided: (2) The proceedings in the sister State had not reached judgment and became, in the language of the Constitution, a judicial proceeding.

In so holding this court made use of the following language:

> "Whether the law of the common domicil of two or more litigants determines their title to property in another territory, so that an attaching creditor, whose domicil is that of the assignor, can not set up against the assignment the law of the foreign country where the property is actually situated, has been much discussed. . . . *It is certain that the law of the common domicil can not overcome such registry and other positive laws of the other country as are distinctly politic and coercive. If a State provides that no title shall pass to property within its borders, except on cer-*

tain conditions, such provision can not be overriden by the law of any other State which parties domiciled there may be held to have adopted.

. . . . . .

"Nor was there any law or policy of the State of New York contravened by the insolvent proceedings in question, or in itself inimical to the title of the assignee."

Cole *vs.* Cunningham, 133 U. S. 107.

As we have seen, in Maryland there is an *imperative* law that no title shall pass to the assignee until bond has been filed which stands today inimical to any title under the assignment.

POINT III.

The Appellees Having Obtained Judgments in Maryland it Would be Unconstitutional for this Court to Deprive them Thereof.

All of the appellees had obtained judgments of condemnation in Maryland from one to two years prior to the filing of the bill in this case. The courts of Maryland have dealt with property in question and by judicial proceedings given to the extent of their respective judgments a title in the proceeds to the appellees. For any other jurisdiction to deprive the appellees of their rights under these judgments would be failing to give "full faith and credit to the judicial proceedings of another State," and therefore unconstitutional.

> "That complainants were not parties to that proceeding, or that Scott may not even have been brought before the court in person, are matters of no consequence in so far as the effect of that judgment comes under consideration in this case. Inasmuch as it was a valid judgment of condemnation, subjecting the attached property to the payment of the demand found to exist for that purpose, pronounced by a court of unquestioned jurisdiction in the prem-

> ises, it would have the same effect if pleaded in defense to an action here that it has in Maryland. Green *vs.* Van Buskirk, 7 Wall. 139, 148: S. C., 5 Wall. 307, 312: Cole *vs.* Cunningham, 133 U. S. 107, 133. For stronger reasons, if possible, no court of another jurisdiction should undertake to thwart its regular execution in the interest of the party thereto, by executing coercion upon him when he may happen to be within its power."
>
> Opinion of the court below.

"Attachment laws," to use the words of Chancellor Kent—

> "are legal modes of acquiring title to property by operation of law, and if a title acquired under the attachment laws of a State and which is valid there, is not to be held valid in every other State, it were better that those laws were abolished, for they would prove to be but a snare and a delusion."
>
> Quoted from Green *vs.* Van Buskirk, 5 Wall. 307.

In Green *vs.* Van Buskirk, *supra*, all of the interested parties were citizens and residents of New York, where the chattel mortgage was made by Bates to Van Buskirk. Green attached the personal property, so conveyed, in the courts of Illinois, where it was then situated, procured its condemnation and sale, and appropriated the proceeds. Van Buskirk sued him in New York to recover the value of the converted property. Van Buskirk was not a party to the attachment suit, nor was Bates by personal service. It was held, nevertheless, that the judgment so obtained, having that effect in Illinois, was a bar to the action, and for the New York courts not to so hold was unconstitutional.

In the later case of Cole *vs.* Cunningham, *supra*, wherein an injunction, issued by a State court of Massachusetts to restrain a citizen of that State from the prosecution of an attachment suit in the State of New York, was upheld, it

was said, after quoting with approval from Green *vs.* Van Buskirk, that—

> "It will be perceived that it was manifestly inadmissible to hold that after Van Buskirk had permitted Green to go to judgment in a proceeding *in rem*, which appropriated the property as belonging to Bates, he could then get judgment against Green for the conversion of what had been so adjudged to him, an adjudication which Van Buskirk had voluntarily declined to litigate in the proper forum, and had not sought in his own State to prevent. It was a contest between two individuals claiming the same property, and that property capable of an actual *situs*, and actually situated in Illinois. The attachment was not only levied in accordance with the laws of Illinois, but the laws of that State affirmatively invalidated the instrument under which Van Buskirk claimed. Clearly, then, the law of the domicil of Van Buskirk, Green and Bates could not overcome such registry and other positive laws of Illinois as were distinctly coercive."

(Concluding:)

> "*In the case at bar the attachment suits* HAVE NOT GONE TO JUDGMENT, *and the assignees in insolvency have proceeded with due diligence against these creditors, citizens of Massachusetts, who are seeking to evade the laws of their own State;* NOR IS THERE ANYTHING IN THE LAW OR POLICY OF NEW YORK OPPOSED TO THE LAW OR POLICY OF MASSACHUSETTS IN THE PREMISES."

It was contended by counsel in Cole *vs.* Cunningham, *supra*, that the decision in Green *vs.* Van Buskirk was conclusive of the case then being argued; but the majority of the court held that because in the Cunningham case there had been no judgment, viz., judicial proceeding, Green *vs.* Van Buskirk did not apply; but it is admitted in the opinion of the majority that had there been a judgment, no other State could interfere by injunction and no suit could be maintained to distribute the proceeds in opposition to such judgment. That the case of Cole *vs.* Cunningham

turned on the question of whether there had been a judgment or not is shown clearly by the opinion of Judges Miller, Field and Harlan, dissenting, where they state that they can see no difference between the right to interfere after an attachment levied, but before judgment, and the right to interfere after judgment; in either instance it would be unconstitutional. In the present case we come within the views of both the majority and the minority, since all the appellees had obtained judgments.

> "The proceeding in this case is subtantially a suit in equity to recover and subject the proceeds of land situated in Maryland, that has been condemed and sold under a judgment of a court of that State, to a demand acquired under an instrument which, by the law of Maryland, had no force or effect as a conveyance of title; and, therefore, comes directly within the rule enounced in Green *vs.* Buskirk, and approved in Cole *vs.* Cunningham.
>
> The proper place for the complainants to maintain their claim was in the courts of Maryland which had jurisdiction of the subject matter, and whose laws exclusively governed its disposition.
>
> They, however, not only kept out of the litigation in Maryland of which they had knowledge in time to join before the judgment of condemnation was rendered, but also stood by and permitted the defendant Keane to undertake the labor and expense of the subsequent litigation with Scott, and his daughters, who claimed the remainder upon the termination of his life estate, that resulted in annulling the conveyance, under which they claimed, as in fraud of creditors, and without which result the condemnation judgment would have been of little or no value.
>
> See Scott *vs.* Keane, Maryland Court of Appeals, April term, 1898."
>
> Opinion of the court below.

In Lawrence *vs.* Batcheleer, 131 Mass. 504, quoted with approval in Cole *vs.* Cunningham, the court holds that no right exists to recover back the proceeds after judgment and

sale, and shows that the leading case of Dehon *vs.* Foster, 4 Allen (Mass.) 545, where an injunction was granted before judgment, proceeded upon the theory that it must be done then, since the right to so do would be lost after judgment.

> "But the case of Dehon *vs.* Foster proceeded on the ground that there was no adequate remedy at law for the wrong complained of; that the title to the funds attached, which the defendants, *if permitted to proceed with their action to judgment and levy of execution on the funds attached, would obtain, must be recognized as a valid one by our laws.*"

The case of Bartlett *vs.* Kinney, 147 U. S. 480, relied on by appellants, is really authority in favor of appellees; the court sustained the right of the assignee because (1) the property was personal; (2) the Idaho statute did not relate to foreign assignments; (3) the attaching creditor had not obtained a judgment of condemnation.

POINT IV.

Whether or not one State Court Could Enjoin Parties From Proceeding in Another State Court, it is Clear that no United States Court can do so, even before Judgment.

> "The writ of injunction shall not be granted in any court of the United States to stay proceedings in any court of any State, except in bankruptcy proceedings."
>
> R. S. U. S., Sec. 720.

The aforegoing statute applies as well to injunctions against *parties* who are proceeding in a State court as it does to an injunction against the court itself.

> Dial *vs.* Reynolds, 96 U. S. 340.
> Whitney *vs.* Wilder, 54 Fed. Rep. 554.

This statute applies by reason of its general terms to the Supreme Court of the District of Columbia, which is necessarily a court of the United States.

United States *vs.* Mills, 11 App. D. C. 504.

The object of this act was to prevent unseemly conflict between courts of different jurisdictions which certainly makes it strongly applicable in the present instance.

To prevent such conflict it has always received a liberal interpretation.

Diggs *vs.* Walcott, 4 Cranch, 179.
Peck *vs.* Jeuness, 7 How. 612.
Watson *vs.* Jones, 13 Wall. 679.
Haines *vs.* Carpenter, 91 U. S. 254.
Dial *vs.* Reynolds, 96 U. S. 348.
In re Sawyer, 124 U. S. 200.
Dillon *vs.* K. C. Ry. Co., 43 Fed. R. 545.

The statute may be said to be declaratory and in extension of the established principle of comity between courts, through the operation of which when the jurisdiction of one court and the right of a party to prosecute his suit has attached, another court will not undertake to arrest the proceedings.

Peck *vs.* Jeuness, 7 How. 624.

POINT V.

Laches.

Appellees' judgments were rendered from one to two years before the bill in this case was filed. Such unexplained delay in what now amounts to an attempt to obtain the benefit of appellees' expenditures and hard fought struggles, constitutes unwarranted neglect and *laches* which

would be fatal, even were the court dealing with judgments of the courts of the District of Columbia.

See—

Morris *vs.* Edwards, 62 Tex. 206.
Bateman *vs.* Willoe, 1 Sch. & Lefr. 204.
Barber *vs.* Elkins, 1 Johns Ch. 465.
Stilwell *vs.* Carpenter, 59 N. Y. 414.

"The jurisdiction of equity to stay proceedings at law after judgment and recovery is of ancient origin, and, although now established beyond dispute, it was formerly the cause of frequent and violent contests between chancellors and common law judges. . . . The jurisdiction, although well established, is not regarded as a favorite one with courts of equity. A bill seeking relief of this nature is scrutinized with extreme jealousy, and the grounds upon which the interference will be allowed are confessedly somewhat narrow and restricted. It will not suffice to show that injustice has been done by the judgment against which relief is sought, *but it must also appear that this result was not caused by any inattention or negligence on the part of the person aggrieved, and he must show a clear case of diligence to entitle himself to an injunction.*"

High on Injunctions, 3d Ed., Vol. 1, Sections 112, 113.

POINT VII.

Multifariousness.

The bill is multifarious. The appellees' rights are unconnected; and they should not be compelled, without their desire, to litigate in the same suit.

No Estoppel.

Appellees cannot support their bill upon the principle of estoppel. Their allegations of fact to constitute the same are too vague and indefinite. But even if this were not so

there is no estoppel. If the appellants have by their action prevented themselves from disputing the deed of assignment, this estoppel obviously does not operate to prevent them from taking steps to obtain that which the deed of assignment does not purport to convey, viz., the fee simple, or (2), what it could not convey by reason of the prior fraudulent deeds, viz., the fee simple; or (3), from obtaining, so far as the appellants and the assignee are concerned, what, if Jones *vs.* Clifton, 101 U. S., p. 225, be upheld, belongs to the daughters beyond the attack of any creditor or assignee for the benefit of creditors. To prevent the appellants obtaining that which the assignee could not get would be "dog in manger" policy, which the daughters of Scott would undoubtedly have viewed with pleasure.

But, again, no act of the appellees can operate to prevent this court from giving constitutional effect (1) to the statutes of Maryland, (2) to the Maryland judgments: nor from giving effect to R. S. U. S., Sec. 720, nor to *laches* of the appellants. Even if estopped as to property in the District of Columbia, this is not so as to land in Maryland.

Moore *vs.* Church, 70 Iowa, 208.

The defendant Browning's position does not differ from those creditors who attached subsequently to Keane. He placed the deed of assignment at once upon record in the District of Columbia. It was impossible to record it in two places at the same time unless executed in duplicate, which the assignor did not do, nor would it occur to a layman to suggest the same. The appellants do not charge, nor could they truthfully do so, that the failure to record the deed in Maryland at once was by reason of any fraudulent design of Browning; they say *he neglected to do so.*

When he received the deed back from the Recorder in the District of Columbia, Keane had already laid attachments on the Maryland property for more than sufficient to

consume the life estate, all that the assignment attempts to convey or could convey.

In reference to the fee simple, Browning occupied no position of trust; it was simply a question which creditor could first obtain a lien on it; and the firm of Browning & Middleton occupied, as regards the fee simple, the same relation as any other creditor.

But, again, the act of the Maryland Legislature, Code, Art. 16, Sec. 205 et seq., or the judgment of Browning & Middleton, will prevent this court from giving to the appellants any interest in the property, or any right to question the judgment. Added to this is their *laches* and R. S. U. S. Sec. 720. If Browning & Middleton's judgment were invalidated, it would not benefit the appellants, since the judgment of Daly, set forth in the bill of complaint, would then come in to consume the entire remaining fund.

Conclusion.

To the points heretofore suggested must be added the difficulty of this court obtaining the funds if it determined to distribute them, for it is hardly conceivable that the Maryland court will permit them to be brought here in opposition to their laws and judicial proceedings, and thus we are confronted with the danger of unseemly conflict. If the appellants have rights, let them go to Maryland, where the funds are, and ask relief. If they have no rights which that State will recognize, this court will hardly lend itself to aid them in opposition to the Maryland laws, and it is submitted that if the appeal is not dismissed the decree of the lower court should be affirmed.

A. A. BIRNEY,
JAS. S. EDWARDS,
ARTHUR PETER,
Solicitors for Appellees.

CHAMBERLIN *v.* BROWNING.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 251. Argued April 19, 1900. Decided May 14, 1900.

The substantial relief sought in this case against the attaching creditors and the matter in dispute was the defeat of distinct and separate claims of each attaching creditor, so far as it affected the real estate owned by Scott, and as no defendant was asserting a claim which aggregated the amount required to confer jurisdiction upon this court, the case is dismissed for want of jurisdiction.

JOHN D. SCOTT executed in the District of Columbia, on April 21, 1896, a deed of voluntary assignment for the benefit of his creditors, embracing in a schedule of his assets, among other property, a life estate in certain land situated in Montgomery County, Maryland. Horatio Browning qualified as assignee under the deed of assignment.

Various steps were taken under the assignment, but prior as well as subsequent to the recording of the deed in Montgomery County, Maryland, certain creditors of Scott, all but one of whom resided in the District of Columbia, seized the real estate referred to under attachment process issued in Maryland. The attachment proceedings went to judgment, whereupon one of the judgment creditors filed a bill in the Maryland court to declare that the interest of Scott in said real estate was in fee simple and not merely a life estate. In this latter suit a decree was entered sustaining the claim of the creditors, and proceedings were then taken by the several creditors to enforce their judgment claims against said real estate.

The appellants, as creditors of Scott, thereupon filed their bill in the Supreme Court of the District of Columbia against Scott, Browning, the assignee and the various creditors who had instituted the attachment proceedings in Maryland. In substance, the bill set out the various facts hereinbefore recited, charged

that the attaching creditors had actual and constructive notice of the deed of assignment, and had participated in the proceedings thereunder, and were without lawful right to enforce their attachment claims against the real estate referred to, and thus to secure a preference over the other creditors who had elected to take the benefit of the deed of assignment. The sums sought to be recovered by each of the attaching creditors in the proceedings in Maryland were enumerated in the bill, and in no instance did the claim or claims of any of said creditors aggregate more than $3500. Various allegations were also contained in the bill with respect to mismanagement by Browning in the execution of his trust as assignee. Part of the specific relief prayed in the bill was the removal of Browning as assignee, a stating of his accounts, discovery by Scott of further assets and the execution by him of a deed in fee simple of the Maryland property. As to the attaching creditors, the following relief was prayed:

"Six. That the attaching creditors be restrained, pending this action, from in any manner proceeding to enforce their said attachments on judgments of condemnation against said Maryland land, and from doing any act or thing to hinder, delay or interfere with the control or management of the estate abroad for the equal benefit of all said Scott's creditors, and from in any way seeking to secure to themselves any greater benefit or interest out of said estate and effects than shall represent their '*pro rata*' share under said assignment, and that on final hearing such injunction be made perpetual.

"Seven. Or, if this cannot be done, that the attaching creditors be directed to bring into court any moneys realized from said land, and that the same be treated as assets passing by said deed of assignment, and distributed among the creditors as therein directed."

Each of the defendants who are appellees in this court demurred to the bill. From an order overruling the demurrers an appeal was allowed by the Court of Appeals of the District of Columbia. That court reversed the order made by the lower court and remanded the cause, with directions to sustain the demurrers and dismiss the bill as to the appellees Keane, Mid-

dleton, the Central National Bank of Washington, Edward O. Whitford, and the partnership of Browning and Middleton, and for further proceedings not inconsistent with the opinion of the court. Thereafter the Supreme Court of the District, upon consideration of the mandate of the Court of Appeals, entered a decree sustaining the demurrers and dismissing the bill of complaint as to the defendants named in the mandate of the Court of Appeals. From this decree the case was again taken to the Court of Appeals, and that court affirmed said decree. This appeal was then taken.

Mr. O. B. Hallam for appellants.

Mr. Arthur Peter and *Mr. A. A. Birney* for appellees. *Mr. James S. Edwards* was on their brief.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court.

Along with an argument upon the merits, counsel for the appellees have presented a motion to dismiss this appeal as to all the appellees, because of the absence of any controversy involving the requisite jurisdictional amount. This motion we find to be well taken.

The decree appealed from affected only the defendants, who, as attaching creditors, had prosecuted actions in the Maryland court upon their claims against their debtor, Scott, and had by ancillary proceedings subjected real estate owned by their debtor to the satisfaction of the judgments obtained in the actions referred to.

Recovery of land or its value was not the relief sought by the bill below against the attaching creditors, for said creditors did not hold or assert title to the land. The value of the land, therefore, was clearly not the subject matter of dispute between the complainants and the said attaching creditors. The relief prayed against the latter was the enjoining of the enforcement against real estate in Maryland of the judgments obtained by the appellees, or the bringing into court of any

moneys realized from said land by virtue of the proceedings. But the appellees, as attaching creditors, were not jointly asserting their claims against Scott or his property, nor were they claiming under a common right. Their claims and the judgments based thereon were separate and distinct, the one from the other, and in no case did the amount of the judgments obtained by either of the appellees equal $5000. The case presented is clearly within the principle of the decision in *Gibson* v. *Schufeldt*, 122 U. S. 27, and cases there cited. The *Gibson case* was a suit brought by general creditors to set aside as fraudulent a conveyance in trust for the benefit of preferred creditors. The decree set aside the conveyance as fraudulent so far only as it affected the rights of the plaintiffs. But one of such general creditors held a claim, amounting to $5000. A motion to dismiss the appeal as to all other plaintiffs was sustained, the court holding that the sole matter in dispute between the defendants and each plaintiff was as to the amount which the latter should recover, and that the motion to dismiss the appeal of the defendants as to all the plaintiffs, except the one whose debt exceeded the jurisdictional amount, should be granted. Had the appellants recovered against the appellees the amount collected by the latter upon their judgments, it is clear that the amount in dispute for the purpose of determining jurisdiction would be the amount of recovery assessed against each defendant separately. *Henderson* v. *Wadsworth*, 115 U. S. 264; *Friend* v. *Wise*, 111 U. S. 797. As stated in the *Henderson case*, neither co-defendant nor co-plaintiffs can unite their separate and distinct interests for the purpose of making up the amount necessary to give this court jurisdiction upon writ of error or appeal. If, therefore, the appellees could not, if recovery had been had against them, unite their separate interests for the purposes of an appeal, the appellants cannot do so for the purpose of asserting the existence of appellate jurisdiction in this court.

In the case at bar, we repeat, in effect, the substantial relief sought against the attaching creditors, and the matter in dispute between them, was the defeat of the distinct and separate claims of each attaching creditor so far as it respected the real

estate owned by Scott, and, as already shown, no defendant was asserting claims which aggregated the amount required to confer jurisdiction upon this court.

Dismissed for want of jurisdiction.